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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ANTHONY S. WENC,

Petitioner

v.

CABLE NEWS NETWORK, INC./HEADLINE NEWS C/O Turner Broadcasting Inc.; AMERICAN BROADCASTING COMPANY, INC.(ABC INC.); KVOA COMMUNICATIONS, INC.; KGUN INC.; KOLD INC.; KNST INC.; "JOHN DOE Defendants,"

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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145 IP

LEGAL QUESTIONS FOR REVIEW

1) Is warrantless satellite surveillance a violation to the 4th Amendment of the Constitution of the United States, Federal Wiretap Statutes (18 U.S.C. § 2510 et. seq.) and Article II § 8 of the Constitution of Arizona for which there can be civil remedy against either private or state perpetrators of satellite surveillance and/or other surreptitious electronic eavesdropping and surveillance?

2) Is peering into the window of a private residence by a law enforcement agent without a warrant a violation to the 4th Amendment's "search and seizure" clause?

3) Satellite surveillance is conducted remotely and secretly, and in most cases unknown to the subject, inherently making it difficult to obtain evidence to prove being victim to such surveillance. Does a civil complainant have a right to discovery and a right to present evidence to a court in order to be able to prove an allegation of satellite surveillance?

4) Does 42 U.S.C. § 1985(1) provide legal protection for state employed school teachers, who are employed under the requirements to have taken an "oath of office" to uphold the Constitution of the United States; or other state sanctioned persons such as a Precinct Committeeman?

5) Does the intent of the language of 42 U.S.C. § 1985(2) provide that the act of "attending" court include filing a lawsuit; and does eavesdropping on telephone calls to legal counsel constitute obstruction of justice under this statute?

6) Does 42 U.S.C. § 1985(3) provide protection from a conspiracy against a person due to his/her political and

religious affiliations when such a conspiracy violates 4th amendment rights due to satellite surveillance and/or other surreptitious electronic eavesdropping and surveillance? Are public school teachers a protected class within the meaning of §1985(3)?

7) Are television broadcasters and/or cable operators "common carriers" subject to private liability under 47 U.S.C. § 206 for derived regulations of the United States Code of Federal Regulations as authorized by the Federal Communications Act?

8) Are media broadcasters and its employees "state actors" in violation of 42 U.S.C. § 1983 and/or a *Bivens* claim if assuming true that an act of satellite surveillance has been perpetrated against a person by a state official (either state or federal) in conjunction with a media broadcaster?

9) Does satellite surveillance constitute torts of common law trespass, laws of unfair competition (right of publicity), and invasion of privacy?

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CITATION OF OFFICIAL ORDERS IN THE DISTRICT OF ARIZONA

ORDER by Magistrate Judge Nancy Fiora (9/15/1997) Denying Plaintiff's (Wenc) Motion to Seal.

MINUTE ORDER: (11/26/1997) KOLD's hearing for Motion to Dismiss vacated pending resolution of Plaintiff's request for extension of time and request for special instructions.

ORDER by Magistrate Judge Nancy Fiora (12/01/1997) Granting Plaintiff's request for extension of time and granting Plaintiff to file his statement of facts under seal.

ORDER by Magistrate Judge Nancy Fiora (3/09/1998) Vacating KGUN's hearing regarding its Motion to Dismiss.

REPORT AND RECOMMENDATION by Magistrate Judge Nancy Fiora (7/17/1998) District Court should: dismiss Plaintiff's Complaint for lack of subject matter jurisdiction; deny Plaintiff's motion to compel discovery and to join additional defendants; grant all of defendants motions to dismiss and/or motions for summary judgment; and grant defendants' motion to unseal.

ORDER by Magistrate Nancy Fiora (8/11/1998) Clarification that Report and Recommendation should include dismissal of claims against all defendants, including KVOA.

ORDER: by Judge William D. Browning (9/25/1998) Granting adoption of Report and Recommendation of 7/17/1998.

JUDGMENT: by William D. Browning (9/25/1998) All defendants' motions to dismiss and/or motions for summary judgment are granted and this case is dismissed with prejudice.

ORDER: by Judge William D. Browning (10/27/1998) Denying Plaintiff's Motion to Reconsider and vacate the 9/25/1998 Order.

CITATION OF OFFICIAL ORDERS IN THE NINTH CIRCUIT COURT OF APPEALS

MEMORANDUM: before Reinhardt, Trott, and Mckeown, Circuit Judges (5/14/1999) Affirmed District Court's Order of 9/25/1998 which adopted the 7/17/1998 Report and Recommendation.
ORDER: Before Reinhardt, Trott, and Mckeown, Circuit Judges (8/02/1999) Denying appellant's(Wenc) Petition for Rehearing En Banc.

BASIS FOR JURISDICTION

The United States Supreme Court has appellate jurisdiction from the United States Court of Appeals for the Ninth Circuit from that court's Memorandum of May 14, 1999, which affirmed the District Court of Arizona's Order of September 25, 1998 adopting in full the Magistrate's July 17, 1998 Report and Recommendation. In addition, the Ninth Circuit's Order of August 2, 1999, denied Petitioner's Motion for Rehearing. The statutory provision believed to confer jurisdiction for *writ of certiorari* to this Court is 28 U.S.C § 1254.

LEGAL PROVISIONS INVOLVED IN THE CASE

(See appendix for text)

4TH Amendment to the Constitution of the United States
Article II § 8 to the Constitution of the State of Arizona
18 U.S.C. §§ 2510-2520
42 U.S.C. § 1983
42 U.S.C. § 1985(1)
42 U.S.C. § 1985(2)
42 U.S.C. § 1985(3)
42 U.S.C. § 1986

47 U.S.C. § 206
47 U.S.C. § 208
47 U.S.C. § 225(a)
47 U.S.C. § 558
47 C.F.R. §15.9
47 C.F.R. §2.701
A.R.S. 13 § 504(A)(2)
A.R.S. 13 § 507
A.R.S. 13 § 3005
A.R.S. 13 § 3008
Restatement (Second) of Torts § 652B, (p.378, 1977)
Restatement of Law (Third), Unfair Competition § 46 (p. 528, 1995)

STATEMENT OF THE CASE

The basis for federal jurisdiction in the District Court of Arizona is diversity jurisdiction and federal question. The nature of this case is centered on the Petitioner Wenc's (Plaintiff) allegations of a conspiracy among the Defendant[1] broadcasters CNN/TBS, ABC, KOLD, KVOA, KGUN and KNST consisting of high-tech satellite surveillance and/or other technologies including lasers and/or microwaves to surreptitiously surveillance the Petitioner in the privacy of his home both visually and of his oral and telephonic communications. Such surveillance is believed to have begun approximately in April 1995 and ended approximately in June 1996. The Petitioner has alleged that the surveillance was conducted by Cable News Network, Inc. (CNN),

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[1] Cable News Network, Inc. owned by Turner Broadcasting System, Inc of Georgia (now both owned by Time Warner, Inc.); American Broadcasting Co., Inc, of New York; KOLD-TV 13 of Elcom of Arizona, Inc. and apparently also known as Raycom Media, Inc.; KVOA -TV 4, of KVOA Communications, Inc., an Arizona Corporation.; KGUN-9 TV, a division of Lee Enterprises, Inc., a Delaware corporation.; and KNST-AM 790, owned by SFX Broadcasting, Inc. of Arizona/Delaware, (now owned by Capstar, Inc.)

American Broadcasting Co., Inc. (ABC) and likely at least one third party government agency working in collaboration with one another and then disseminating the interceptions to the smaller local affiliate TV and radio broadcast stations of KGUN, KOLD, KVOA and KNST who broadcast from Tucson, Arizona; of which such broadcasts can be viewed or listened to throughout South East Arizona via normal antennae or in cable programming from various television cable companies in the region. Additional direct government involvment includes the unusual "ploy" visit to Petitioner's residence by two law enforcement officers, one a deputy from the Pima County Sheriff's Department and the other a Special Agent of the Treasury Department, the latter who also attempted a search by peering through a window of Petitioner's residence upon approaching the residence.

The Petitioner maintains this satellite surveillance was conducted against him due to his Catholic and Republican religious and political beliefs and associations as well as due to his occupation as a public high school teacher. Petitioner Wenc was employed full time by the Sierra Vista Public Schools as a World History teacher from September 1994 through May 1995. Concurrently as a teacher, Wenc was an active member of local Republican political activities as he was both a member of the Cochise County Young Republican Club and an elected Precinct Committeeman beginning in September of 1994 through November of 1996. Consequently, due to Petitioner's local public status and affiliations, the defendant broadcasters took part in a conspiracy consisting of surreptitious tortious eavesdropping and surveillance to pry into his private and public life, a common practice by media agencies in today's world of digging and reporting gossip and innuendo as sources for "news" stories.

ARGUMENT FOR RELIANCE ON WRIT

SATELLITE SURVEILLANCE

The crux of the facts alleged by the Petitioner(Plaintiff) are premised upon satellite surveillance, a legal issue unprecedented before any courts in the United States. In fact, one of the few legal authorities on the issue states "the courts have not yet had the opportunity to examine this area of surveillance.[2]" Additionally, a highlight of a few of the most important acknowledgments made in Warrantless Satellite Surveillance[2] are:

> 1) ". . . there may be a cost; the potential exists for unknown sources to scrutinize another's activities without his knowledge or consent." (p. 731)
> 2) "Now, a silent, invisible intruder from space possesses the capabilities to peep into our businesses, backyards, and even through physical structures into our homes." (p. 732)
> 3) "The potential for the misuse of such increased clandestine viewing capabilities is staggering." (p. 732)

In addition, the only previous reference to the issue by this Court was in 1986 in *Dow Chemical v. U.S*[3]. 476 U.S. 227. Finally, the *Stanford Journal of International Law* (Fall

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[2] Warrantless Satellite Surveillance: Will Our 4th Amendment Privacy Rights Be Lost in Space?, *John Marshall Journal of Computer & Informational Law.* Summer 1995, Vol XIII N. 4, p. 739

[3] The passage is as follows: "[i]t may well be, as the Government concedes, that surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such has satellite technology, might be constitutionally proscribed absent a warrant."

1988) discussess Newsgathering by Satellites, and the potential legal disputes likely to arise from the increased usage of such "newsgathering" tactics.

Clearly, the phrase "satellite surveillance" conveys connotations of hi-tech, eavesdropping, spying, secret, clandestine, invisible and any other similar adjectives. Due to this issue being both unprecendented and out of the ordinary, the Petitioner feels the District Court departed from a just judicial proceeding and thus the Court of Appeals for the Ninth Circuit sanctioned such an injustice to an important Fourth Amendment issue. Notwithstanding any judicial proceedings, the unprecedented nature of this case alone makes it ripe for this Court's judicial discretion so as to not allow the legal system to fall further behind to rapid technological advances that will continue to crush constitutional rights.

Just as the legal issue itself is unprecedented, so too then will any facts accociated with satellite surveillance. In this case, some of the Petitioner's facts alleged may at first glance appear extreme, impossible or perhaps unbelievable. However, the very nature of satellite surveillance is extreme, and at a past time was indeed impossible, though is now becoming increasingly used by government agencies and private entities.

For the average citizen, the mere existence, usage and capabilities of such surveillance are probably never even contemplated in ordinary life. This is the critical issue in this case. It would seem reasonable to assume that in many cases of satellite surveillance a person may never be aware of such surveillance and suffer no known harm should no negative external consequences become upon them, with the exception of his/her privacy being invaded, which too would perhaps not be realized by the person since he would be unaware of the monitoring. Thus, it is only when a person suffers external negative harms, realizes or witnesses other external negative factors regarding one's life, that one could reasonably conclude he was under some sort of surveillance. In this case, the Plaintiff has provided the several negative external consequences as well as witnessing of the "in disguise" remarks to logically conclude he was being surveillanced. It is at this point then, that this Court must determine if such is sufficient for a person to witness no matter how bizarre a particular fact may appear with regards to one determining he is under surveillance. Obviously, a person must witness or experience something in his life in order to even have the slightest notion that "something is going on" out of the ordinary. Generally and simply put, if one is to be in a car accident, then some sort of collision with at least one automobile must occur, which a person would obviously notice. To detect surveillance, one traditionally might find an electronic "bug" on the premises or perhaps actually view a person down the street aiming a laser eavesdropping device or a parabolic microphone into his property. In this case, neither a physical "bug" nor a person[4] was found conducting surveillance but rather the Plaintiff had to detect and deduce, or "put two and two together," to conclude a more sophisticated eavesdropping and surveillance device was being used. Here, the Plaintiff's observed the "in disguise" remarks on various Defendants' broadcasts, and unusual occurrences in his life, including the questionable visit by law enforcement officers to Plaintiff's residence. Looking back, would the Plaintiff have been better off to not list any instances of surveillance? Perhaps the lower courts may have viewed this issue differently, but the Defendants, however, would have been sure to claim the Plaintiff had no facts to support a claim of surveillance. This indeed occurred in this case as Plaintiff's initial Complaint did not list the underlying details as later found in his PSOF. In fact, without waiting to hear all the facts, KOLD hastily

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[4] Excluding the federal agent who peered through one of the Plaintiff's windows.

"move[d] for summary judgment because there are no facts that support Plaintiff's claim against KOLD." (KOLD Motion to Dismiss p. 1) So, as this Court can see, the Plaintiff was, in a way, in a no win position as it turned out in explaining his Complaint. The truth and reality is, however, completely opposite as the Plaintiff has witnessed probably more than anyone might ever witness if one were the subject of surreptitious satellite surveillance. The Plaintiff was able to easily deduce "something was up" due to the reckless disseminations and what in several instances was almost notification to the Plaintiff that the broadcasters wanted his attention, or at least were comfortable in emitting subtle, almost beckoning, yet revealing remarks and actions. **(#47 PSOF See Appendix).** While some of the Plaintiff's facts may sound unusual, they can be validated by the Court's own viewing of the video tapes of the broadcasts the Plaintiff has cited. At a minimum, Your Honors would view the videos and likely think something along the lines "that sure was peculiar for the broadcaster to do or say."

In summary, this Court must determine what a person can witness and present as facts in an allegation that can be perpetrated in virtual, it not entirely, in secrecy. I offer to this Court, that the only way such a claim can be validated is if the Court consider other circumstantial "suspicious" facts that may not be pure examples of "interception and disclosure of oral communications" or "electronic surveillance." For without this latitude, a party might never be able to defeat a defendant's summary judgment motion pertaining to surreptitious satellite surveillance, as there is no way to see a satellite, microwaves, or laser beams. To affirm the lower courts on this claim would crumple the 4th Amendment to the U.S. Constitution and negate the Congress' deliberate intention in the language of the Federal Wiretap Statutes. Congress intentionally used broad language such as ". . .any electronic, mechanical, or other device . . . for the purpose of the surreptitious interception of wire, oral, or electronic communications. . ." when prohibiting eavesdropping devices in 18 U.S.C. § 2512 as they recognized the numerous devices already in existence and the likelihood of new eavesdropping devices being created in this modern technological world. To affirm the lower courts would virtually be saying that there is never an instance in which a person could successfully bring forth a surreptitious satellite surveillance case. Furthermore, to affirm the lower courts would in essence be rubberstamping both the mass media's and government's ability to conduct blanket search warrants via satellite surveillance without the issuance of a court approved search warrant (assuming an approved search were constitutional).

Thus, the primary issue appears to be the factual basis one can successfully allege a satellite surveillance conspiracy in order to be granted discovery by the Court. The Plaintiff believes he has witnessed sufficient events and has presented those facts.

RIGHT TO DISCOVERY

It should go without saying that unauthorized eavesdropping on any aural communication whether via a simple hidden tape recorder or a complex space-orbiting satellite is a violation to the Federal Wiretap Statutes. Thus, the fundamental issue this Court should delve into extensively is what is a just standard of summary judgment in a case alleging unprecedented legal and factual issues. In the instant case, the District Court of Arizona completely neglected to surmise the scope of satellite surveillance both legally and factually as the opinions of that court were absent of any substantive analysis of this powerful technology. Instead, the District Court merely relied on simple and basic denials made in affidavits submitted by defendants KVOA, KOLD, KGUN and KNST thus making it easy for any defendant to simply deny any violation to surreptitious eavesdropping and surveillance. Additionally, defendants CNN/TBS and ABC offered no affidavits in their defense. The acceptance by the District Court in taking the defendants' affidavits as true can best be compared to the psychological "line experiment[5]" by Solomon Asch which measured the effects of group pressure and conformity. In this experiment, one person was convinced by eight others to accept as true that the length of one line was comparable in length to one of three other lines presented despite it clearly being unequal. Similarly, the District Court has denied the truth in this case and has accepted the distortions and untruths presented by the defendants and their attorneys. Furthermore, the Supreme Court recognizes the potential injustices of affidavits as it has held that:

> It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. **Trial affidavit** is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

(quoting *Poller v. Columbia Broadcasting Company,* bold added 368 U.S. 464, 82 S. Ct. 486, 7 L. Ed. 2d 458) 1962. Finally, and most significantly, the Supreme Court has stated:

> [i]t is probably true that in the ordinary conspiracy case a plaintiff would be entitled to obtain discovery against all the alleged conspirators instead of being obligated to proceed against them seriatim. *First National Bank Of*

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[5] Educational Psychology, p. 495, (1990) Sprinthall and Sprinthall. McGraw Hill citing Asch, S.E. (1952). Social Psychology. Englewood Cliffs, N.J. Prentice-Hall.

Arizona v. Cities Service Co. 391 U.S. 253, 88 S. Ct. 1575, 20 L. Ed. 2d (1968).

This case is rooted in allegation of conspiracy. The very definition of a conspiracy, and the redress Congress intended under 42 U.S.C. § 1985 and the surreptitious electronic surveillance statutes, inherently suggests that once an allegation of conspiracy is made, discovery is a fundamental right of the aggrieved to prove his case.

While unjustly accepting the defendant affidavits as true, the District Court ignored or accepted as "implausible" factual events witnessed by the Petitioner as evidence of surveillance. Clearly, this standard of summary judgment did not allow for all favorable inferences of the facts be taken as true in favor of the Plaintiff. Moreover, the District Court never allowed the Plaintiff a right to present evidence to the court despite repeated pleadings to do so. The clandestine operations of surveillance in this case are unprecedented, and thus require a degree of liberal interpretation to events witnessed by the Plaintiff in order for the Court to advance a fair standard of review and justice. Thus, the District Court's findings of law were based on what really is an undeveloped record as additional facts, testimony, and technological revelations in surreptitious surveillance need yet to be entered in this case.

It seems a travesty of justice that the courts in this case could make rulings without viewing any evidence. For example, below are listed five instances of primary pieces of evidence the court has ignored:

1) The *Oprah Winfrey Show* broadcast regarding the Petitioner. (PSOF #45, 47 See Appendix.)
2) The rebroadcast by defendant KVOA of Petitioner's employment interview. (PSOF # 55 See Appendix)
3) The broadcast in 1990 by defendant KVOA regarding the Petitioner. (PSOF # 44 See Appendix.)

4) The broadcast of the show *Crossfire* by defendant CNN on either May 24, or 25, 1995. (PSOF #52, See Appendix.)
5) The broadcast of the show *The Legal Hotline* by defendant KNST in April 1995 or of the other show aired in February 1996. (PSOF #51, **57** See Appendix.)

Even if there were no allegation of electronic eavesdropping, the rebroadcast of Plaintiff's employment interview displays minimally an invasion of privacy that should have been suffient for the lower court to have doubts regarding submitted affidavits and ordered production of such video broadcasts as Petitioner requested in his Motion to Compel. It was clearly unjust for the District Court to prohibit the Plaintiff from presenting evidence before the court in a hearing. Similarly, the Supreme Court has held that

> Prisoner's pro se complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement **should not have been dismissed without affording him the opportunity to present evidence on his claims.** *Haines v. Kerner* (1972), 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (bold added)

Though the Plaintiff is obviously not a prisoner, he is *pro se*, and *pro se* or not, he should be afforded a hearing. The Ninth Circuit itself has held that "pro se pleadings are liberally construed, particularly where civil rights claims are involved." *Balisteri v. Pacifica Police Dept.* (901 F.2d 696, 1990). This it the most important aspect in this case, that the Petitioner's facts be taken as true as it pertains to allegations of satellite surveillance; especially since such an issue is unprecedented in the courts. Moreover, it would also seem, that the final judge of such facts should be done by a jury as jurors should be able to make the final conclusions as to whether all evidence and expert testimony presented satisfies the allegations.

In summary, satellite surveillance poses great threats to 4th Amendment and privacy rights, and is unprecedented before the courts. Thus, this issue alone makes Petitioner's case ripe for granting *certiorari*.

42 U.S.C. § 1985(1)

The Petitioner's primary argument to this claim is that this Court expand the reach of § 1985(1) to more than the traditionally protected "federal officer." Plaintiff believes that under the circumstances surrounding the surveillance conspiracy, that his roles as a secondary public school teacher and Precinct Committeeman should be included within the reach of the meaning of "federal officers" under § 1985(1).

The Plaintiff's position as a teacher is an office of "trust, or place of confidence under the United States" as he was sworn to "support the Constitution of the United States and Laws of the state of Arizona. . ." as stipulated by his Loyalty Oath of Office required to be signed upon employment with the school district. (See appendix) School districts have now historically and increasingly come under the jurisdiction of federal policy for which teachers have come to inherently enforce. For example, the federal courts have come to impose desegregation programs upon public schools in enforcing the "equal protection clause" of the 14th amendment to the U.S. Constitution. Additionally, public schools receive federal funding, and the school district the Plaintiff was teaching in is no exception. Finally, without listing a plethora of cases, schools are subject to compliance of Title IX. Likewise, duties related to Plaintiff being a Precinct Committeeman also require the performance of federal duties. Such duties are related to the fundamental right to vote, registering voters, and confidential meetings and phone calls related to the obvious political associations related to being a Precinct Committeeman.

18 U.S.C. §1985(2)

The legal issue to be resolved with Plaintiff's 1985(2) claim rests on this Court determination if "attending" court includes the filing of a Complaint in a federal court. The applicable claŭse of 1985(2) is as follows:

> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such Court,

The Plaintiff alleges that the Defendants' tortious eavesdropping conspiracy deterred and intimidated the Plaintiff in filing suit against an additional party, Harpo Productions, Inc., (or others) as it pertains to Plaintiff seeking redress (by Joining such defendants to the current suit) to the broadcast of a show about the Plaintiff as explained in PSOF number 45 and 47. Those libels against the Plaintiff are not ordinary as they concern what has become in society the center of hate, prejudgment and controversy. The Plaintiff offered to the District Court two AP reports describing what can happen to a person when falsely accused of such behavior and then such allegations are made widespread. Regrettably, the District Court neglected and failed to see the severe harm and intimidation that occurs to a person under such circumstances. Moreover, in the Plaintiff's case, this issue is derived from a time when the Plaintiff was a minor child which makes it that much more complex.

The Plaintiff argued for the lower courts to adopt the premise that "attending" Court includes the act of filing a lawsuit. Even though the Plaintiff has demonstrated protected class based motive behind the conspiracy as explained fully in §1985(3), a claim under §1985(2) does not require such standing. *Kush v. Rutledge,* 460 U.S. 719, 103 S.Ct. 1483, 74 L.Ed. 2d 413, (1983). Furthermore, under the circumstances as already explained, the Defendants' conspiracy activities obstructed Plaintiff's desire and attempt to file suit against other parties as already stated; in addition to other interferences with justice, such as alleged eavesdropping on legal telephone calls to attorneys and to the Clerk of the Court for the District of Arizona's office.

The actual question of whether attending court includes filing a suit in federal court has not been fully adjudicated. Although, the United States Supreme Court has noted that "the Fifth Circuit's **narrow** [11-10] *en banc* majority in *Kimble v. Duffy*, [648 F.2d 340, (bold added)(1981)] did not include a conspiracy to deter a party from filing a suit in federal court." The *Kimble* Court reasoned as follows:

> Congress enacted the first part of Section 1985(2) in order to protect the sanctity of federal court proceedings and prevent miscarriages of justice. The justice provided by our judicial system, however, does not start on the day of trial. The process of obtaining justice in the court system begins long before a case is called to trial it is initiated at the moment a party files a complaint. *Congress undoubtedly intended to protect the whole course of justice, not just one segment of the system, the trial process.* Thus, for the purposes of Section 1985(2) an individual is deemed to have "attended" a court of the United States from the moment that the person files a complaint.

(quoting *Id.* n. 50 (italics added)) Significantly, that decision in *Kimble* was actually a reversal of the panel's previously holding that filing a complaint was indeed "attending." Congress' intention to protect "the whole course of justice" in this case includes all those actions in which the Defendants conspiratorial activities violated legal confidentiality actions of Plaintiff. In addition , the High Court went on to offer guidance to this issue and has

> "note[ed] more generally that the scope of §1985(2) is unsettled and that on remand the district court, in its discretion, may require the plaintiff to amend his complaint to state the grounds of the §1985(2) claims with greater specificity." **We must leave it to the district court to decide what sorts of threatening or coercive acts the plaintiff may prove. . . .**"

(quoting *Keating v. Carey*, 706 F. 2d 377 at footnote 13, bold added (1983).) Defendants in this case prevented even filing of the Complaint, or attending court. In the late 20th century, the mob-like threatening and intimidation caused through the undue, and further undue and excessive media exposure, which is common practice by broadcasters, in addition to the actual intimidation eavesdropping imposes on a person, are the facts in this case for the jury's consideration. This excessive publicity, and improper dissemination in this case, is the modern day equivalent to the mob violence for which this Federal Civil Rights law was enacted as supported through the facts and other supporting documentation. Finally, even if the question of "attending" Court was not an issue in this case, other actions related to justice were interrupted-the eavesdropping on legal counsel calls.

42 U.S.C. § 1985(3)

It is well established case law that both religious and political memberships are protected classes under § 1985(3). As Republican Senator Edmunds stated in the Senate floor debate, § 1985(3) would apply to conspiracies aimed against a person "'because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist, or because he was a Vermonter,... then this section could reach it." (quoting *United Brotherhood of Carpenters & Joiners v. Scott*[6], 103 S.Ct. 3352, n. 6, 463 U.S. 825, 77 L. Ed. 1049, (1983)). The Second Circuit has stated "Congress did not seek to protect only Republicans, but to prohibit political discrimination in general." *Keating v. Carey*, remanded, 706 F.2d 377 (2d Cir. 1983). The Plaintiff was an above average active member of the Republican Party during the time period the Defendants carried out the tortious eavesdropping conspiracy against him. He was both a Precinct Committeeman and an original member of the then fledgling but now dissolved Cochise County Young Republican Club. A limited number of persons can be a Precinct Committeeman as stipulated by law and thus it is not as if the Plaintiff is just saying because he was a registered Republican he has a claim under § 1985(3). Similarly, a limited number of people go to the extent to become active in an organization officially sponsored and affiliated with the Republican Party. Such political activity and association by the Plaintiff more than satisfies an allegation that the Defendants conspired against him because he was a Republican. One need not be an expert to know that the media prey upon anything that smells of scandal or could otherwise make for a story as it pertains to those involved in the political process. In addition, remarks concerning Plaintiff's religion were also made which inevitably are reasons for the Defendants' surveillance conspiracy against the Plaintiff as his religion is a part of him.

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[6] For fear of creating a broad tort law, the courts have adopted the membership in protected classes theory, though the language of §1985(3) distinguishes between "...*any person* **or** class of persons...." (italics and bold added).

While never stated explicitly, it appears the District Court is holding that any fundamental rights regarding "unreasonable searches" violating the Fourth Amendment are not protected fundamental rights under § 1985(3). This Court should abandon such a premise as it is clear that since politically based conspiracies are protected, then it is also clear that rights other than those associated with the Thirteenth Amendment are protected. For instance, it would seem reasonable to conclude that a Republican would not be subject to involuntary servitude, but rather other *deprived rights*. Specifically, in *Keating*, the court held that "Keating [would] be entitled to a trial on his §1985(3) claim to determine his tenure rights under New York law and the terms and conditions of his employment." (*Keating,* supra.) As seen, then, the Second Circuit applied protection to rights other than those the DC cited as limitations, which in *Keating* were state law rights and not even federal.

Moreover, even if it were ultimately held that absolutely no Fourth Amendment rights are protected from private infringement under § 1985(3), there still exist factual allegations of "state action" (42 U.S.C. §1983) which would then satisfy a § 1985(3) allegation sufficient to survive a motion to dismiss. It was simply bad judgment for the District Court to have stated that the "Plaintiff has not pointed to any evidence supporting his contention that Defendants and the state or federal government conspired to deprive him of a fundamental right." (R & R p. 21) Quite frankly, if there was no evidence supporting such contentions, it was because the District Court never allowed the Plaintiff any opportunity with discovery and presentation of evidence. This again underscores the notion that the lower courts departed "from the accepted and usual course of judicial proceeding," especially given the unique circumstances of the case.

While public teachers have not yet been listed as a protected class under § 1985(3), this Court should include them as well. Even though the Plaintiff has alleged membership in two already protected groups for which they conspired against him, it is clear that the Plaintiff's occupation as a teacher was, in part, a motive behind the Defendants' actions as evidenced in particular with fact number 55 concerning the broadcast of the Plaintiff's interview. In Arizona, the legislature saw the need to provide statutory protections to teachers in A.R.S. 15-507[7]. Perhaps they recognized the historical discriminations teachers have encountered. For example, teachers in the United States were held to discriminatory standards of "accepted moral conduct" and in Ancient Greece teachers were actually part of the slave class. Even if this Court does not hold teachers are a specific class under the statute, the rights the Plaintiff possessed due to that occupation were deprived. As pointed out in PSOF, the Plaintiff was performing duties to being a teacher at home while under surveillance, and more generally in the classroom where he was interrupted due to the extreme and unusual discussion of the Plaintiff by colleagues and students caused by the obvious dissemination leaks of the surveillance. Furthermore, rights of freedom of political association in private were impaired.

In simple terms, it is clear that all a person can do is state why a conspiracy was directed against him and then claim protection under § 1985(3). Even should this Court not include teachers as a protected class, the Plaintiff meets criteria already held protected under the statute. The Plaintiff has done this and thus the factual basis meets the protected classes intent of the section. Just as the Second

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[7] A.R.S.15-507: Abuse of teacher or school employee in school; classifcation- A person who knowingly abuses a teacher or other school employee on school grounds or while the teacher is engaged in the performance of his duties is guilty of a class 3 misdemeanor.

Circuit ". . .[held] that Keating's allegations that the defendants conspired against him because he was a Republican satisfies the Griffin requirement under § 1985(3) of class-based discriminatory animus[,]" so too has the Plaintiff in this case. (*Keating*, supra.)

FEDERAL COMMUNICATIONS ACT CLAIMS

As television broadcasting became mainstream, the question as to whether television broadcasters are "common carriers" has never been answered by the Congress in simple or forthright terminology, thus leaving for the Judiciary to incorporate expanded definitions to the FCA of 1934. Interpreting 47 U.S.C. § 153(h) to include television broadcasters on an equal footing with the specified exclusion of radio stations in the section is a reach of judicial interpretation that should be reversed. Congress intended to only to exempt radio stations from the definition of "common carriers" in §153(h), for if the Congress meant to include television broadcasters it would have made that exemption explicitly in §153(h) as well. Congress could have amended the section to exempt television broadcasters as well, but it did not. In fact, Congress alluded more to the idea that television broadcasters were indeed "common carriers" as explained below.

The definition of § 153(a) notes that wire communication "means the transmission of . . . signals, *pictures*, and sounds. . . ." Section 225(a) defines "common carriers" under Title 47 as those who engage in § 153(a)'s definition of "wire communication." This would appear to make it clear that an entity who transmits *pictures* is indeed a "common carrier," as clearly only television broadcasters could be engaged in the transmission of pictures at the time of passage of § 153(a) and thus were intended to be "common carriers" under the FCA. Additionally, the determination to whether or not Defendants CNN/TBS, ABC, KGUN, KOLD and KVOA are "common carriers" under § 206 may rest on distinct differences or similarities in the nature of broadcasting the particular television broadcaster is engaged in. In other words, does the broadcast programming of a television station fall into the meaning of "cable programming?" Title 47 U.S.C. § 558 offers guidance to this issue as it discusses criminal and civil liability of cable communications:

> Nothing in this subchapter shall be deemed to affect the criminal or civil liability of *cable programmers* or cable operators pursuant to Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws. . . .[italics added]

Defendant Cable News Network, Inc. by virtue of its own names reveals it is a cable programmer.

Clearly, current definitions as to who is a "common carrier" within the scope of § 206 is an area for this Court's discretion.

42 U.S.C. § 1983

The primary assertion for a "state action" claim in this case is based on the suspicious law enforcement visit to the Plaintiff's home that is linked directly to a completely out of the ordinary "in disguise" remark on CNN's *Crossfire* on either May 22 or 23, 1995, including the peering into one of the Plaintiff's windows by a federal law enforcement officer upon approaching the door. Furthermore, as pointed out to the District Court, Defendants CNN and KNST routinely have state officials on their programs as guests which proposes the possibility of their knowledge of surveillance and partaking in the conspiracy and/or their neglect to prevent it. Lastly, the potential for the satellite surveillance equipment to have been conducted by a government agency such as the Central Intelligence Agency or the National Reconnaissance Office can not be ignored. Thus, the Plaintiff's "state action" claim would be based on both § 1983 and a *Bivens* claim due to the presence of both a state and federal law enforcement officer.

The Petitioner maintains it was premature for the District Court to rule on any of his claims until after discovery and an amended complaint. It was particularly premature to rule on this "state action" by applying a standard of review to a normally complex issue, much less doing so in this case without additional fact finding. The standard of review applied by the District Court was as follows:

> To determine whether the conduct of private parties amounts to governmental action, the Ninth Circuit applies the following four tests, (1) the governmental nexus test, (2) the public function test, (3) the state compulsion test, and (4) the joint action test. *Berger v. Hanlon*, 129 F.3d 505, 513 (9th Cir. 1997*)*, [R & R p. 13]

Nonetheless, in addition to the absence of additional fact finding, it was error to dismiss the § 1983 claim as the allegation of law enforcement officers alone on Plaintiff's property is sufficient to survive a motion to dismiss as the Supreme Court has held in *Adickes* the

> [r]espondent did not carry out its burden, as the party moving for summary judgment, of showing the absence of a genuine issue as to any material fact, as it did not foreclose the possibility that there was a policeman in the store while the petitioner was awaiting service (from which the jury could infer an understanding between the officer and an employee of respondent that petitioner not be

> served), and its failure to meet that burden requires reversal. Pp. 153-159.
>
> Because respondent failed to meet its initial burden as the party moving for summary judgment, petitioner was not required to come forward with suitable opposing affidavits under Fed. Rule Civ. Proc. 56 (e). Pp. 159-161.
>
> 'The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful; *Monroe v. Pape*, 365 U.S. 167 (1961); see *United States v. Classic*, 31 U.S. 299, 326 (1941); *Screws v. United States*, 325 U.S. 91, 107-111 (1945); *Williams v. United States*, 341 U.S. 97, 99-100 (1951). Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under §1983. 'Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,'" *United States v. Price*, 383 U.S. 787, 794 (1966)

(quoting *Adickes v. S. H. Kress & Co.* 398 U.S. 144 (at N. 14, 15, 34), 90 S. Ct. 1598, 26 L. Ed. 2d 142, 1970). Now just as the High Court held in *Adickes* that a jury could infer an understanding by the police officer, so too should this Court hold that the presence and questionable visit by law enforcement on the Plaintiff's property be sufficient to defeat a motion to dismiss and a motion for summary judgment. More recently, this Court held that the media agents (CNN) were "state actors" when accompanying law enforcement to execute a search warrant. In *Berger*, the media went so far as to make a business contract with the government agents, though did not make that known to the Magistrate when the warrant was sought and issued, which culminated in civil right violations. (*Berger*, supra.)

This Court should allow for greater latitude in applying any of the four "state action" tests as enumerated in *Berger*, if applying any of them at all at this point due to the unprecedented nature of satellite surveillance and the incomplete record due to denying Petitioner discovery.

COMMON LAW TORTS

In determing whether satellite suveillance supports tort claims of common law trespass, laws of unfair competition: right to publicity, and invasion of privacy, the Court may need to examine the following.

In the present case, it is alleged Defendants utilized a laser or some other device to enter and produce visual and aural surveillance inside Plaintiff's residential structure. While no physical entrance by other persons occurred, the laser beam or whatever means that entered into Plaintiff's residential structure, produced visual images, as well as aural interceptions, thus trespass has occurred as this is equivalent to a traditional physical search. "The 'trespass doctrine' of *Olmstead v. United States*, 277 U.S. 438, and *Goldman v. United States*, 316 U.S. 129, is no longer controlling. Pp. 351, 353." (quoting from *Katz v. United States* 389 U.S. 347 (1967). It appears to be common ground that a private home is [a constitutionally protected] area *Weeks v. United States*, 232 U.S. 383" [*Id.* Footnote 8]. Finally, as the Supreme Court alluded, "[i]t may well be, as the Government concedes, that surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant." (quoting *Dow* supra. from Warrantless Satellite Surveillance, supra.)

The tort of "right of publicity" is relatively recent (1995) and perhaps such a claim should only be adjudged by a jury evaluating all the facts and circumstances. Nonetheless, the Petitioner offers the following for consideration.

Eavesdropping in the vast manner Defendants engaged in obviously encompasses many aspects of a person's life: 1) current as it happens; 2) past as it might be discussed in conversation; and 3) future aspects as that might occur. In effect, then, eavesdropping amounts to the procuring of a person's biographical data without consent or compensation, even if it is not printed in a book or other traditional biography. Defendants, and any others have become privy to Plaintiff's life while under surveillance from dissemination by Defendants' employees or others present at Defendants' premises. In other words, Defendants ears have no right to entertain themselves for free of Plaintiff's persona and private life. In theory, if Plaintiff had written an autobiography, or any similar works, Defendants' employees would not be entitled to a free copy because they were employed by media broadcasters. Compare this to the fact that these Defendants' business comes precisely in this manner, viewers watching or listening to their broadcast programming: news and entertainment shows; assuming there is a distinction between the former and the latter. With regards to KNST particularly, non-employees utilize the broadcast premises and equipment and thus an aspect of the public at large became privy to Plaintiff's private life. Further, Plaintiff's ideas are his own and is entitled to compensation from others for listening to his ideas or persona, just as persons are entitled to compensation for speaker fees or other consultation or counsel or intellectual property. Inevitably, Plaintiff's ideas were incorporated into use, whatever that use may have been. Apparently Defendants were so interested in Plaintiff that they utilized sophisticated technological resources to monitor Plaintiff.

Finally, "proof of deception or consumer confusion is not required for the imposition of liability under [§ 46]" (Restatement (Third) § 46, p. 530, 1995). In addition, a plaintiff is not required to prove that the defendants intended to identify the plaintiff. [Id. 532]. Defendants possess no right to Plaintiff's private life nor do they possess the right to exposes a person to "media judgment" for their commercial enterprises.

Clearly, it goes without saying that satellite surveillance is an invasion of one's privacy, thus there is no need for a detailed argument.

CONCLUSION

In summary, Petitioner's core issue of satellite surveillance is unprecedented. The secretness and ease to conduct such surveillance clearly exhibits the need for basic discovery in order to uncover tangible evidence. Granting Petitioner certiorari or quick remand will bring the legal system one step closer in keeping in step with technologies that threaten precious Fourth Amendment rights.

SUBMITTED this ____ day of October 1999.

Anthony S. Wenc, *Petitioner*

APPENDIX

ORDERS & OPINIONS

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JUL 17 1998

CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY____________ DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ANTHONY S. WENC,

Plaintiff,

vs.

CABLE NEWS NETWORK, INC., et al.,

Defendants.

No. CIV 97-528-TUC-NF (WDB)

REPORT & RECOMMENDATION

APPENDIX

Pending before the Court are the following motions filed by Defendants:[1] (1) KOLD's Motion to Dismiss and Motion for Summary Judgment, (2) KGUN's Motion to Dismiss and Motion for Summary Judgment, (3) Cable News Network's ("CNN") and Turner Broadcasting's ("TBS") Motion to Dismiss and Motion for a More Definite Statement, (4) American Broadcast Corporation's ("ABC") Motion to Dismiss, (5) SFX Broadcasting's ("KNST") Motion to Dismiss and Motion for Summary Judgment. Also pending are: Plaintiff's Motion to Compel, Plaintiff's Motion to Stay, KOLD's Motion to Unseal and Plaintiff's Request for Special Instructions. Additionally, all Defendants have joined one another's motions and responses. For the following reasons, the Magistrate Judge recommends that the District Court, after its independent review, grant Defendants' motions to dismiss and for summary judgment, deny Plaintiff's motions to compel and to stay, grant Defendants' motion to lift the seal and deny Plaintiff's Request for Special Instructions.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the instant *pro se* action alleging that Defendants, who are media agencies, "have been eavesdropping on the Plaintiff, and his family, and any acquaintances.. .in the privacy of my residence...this surveillance has also been carried out in such a manner that the media's actions have also produced 'visual surveillance eavesdropping'" by the means of aural satellite, microwave technology, a laser device, or other prohibited radio eavesdropping devices. (Complaint, p.2) According to Plaintiff Defendants violated his constitutional rights and also criminally conspired against him in violation of federal and state statutes and regulations. (Id. at p.3) Specifically, Plaintiff alleges that:

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[1] Defendants are Cable News Network, Turner Broadcasting, Inc., American Broadcasting Co., KVOA Communications, Inc., Lee Enteronses, Inc. of which KGUN is a division, Elcom of Arizona, Inc., dba KOLD, Inc., KOLD and SFX Broadcasting, Inc., dba KNST, Inc.

> defendants engaged in conduct in violation of the following sections of the United States Code: 18 U.S.C. 241, 18 U.S.C. *2511,* 18 U.S.C. 2512,42 U.S.C. 1983,42 U.S.C. *1985,* 42 U.S.C. 1986; the following sections of the Code of Federal Regulations: 47 CFR *15.9* and 47 CFR 2.701; and the following Arizona Revised Statutes: 13-107, 13-1003, 13-3004, 13-3005 and Article II, section 8 of the Constitution of the State of Arizona thus resulting in a criminal conspiracy against the Plaintiff, consisting primarily of tortious surreptitious eavesdropping and electronic surveillance, using this information for their own commercial gain. . .As a result of the aforementioned conspiracy, Plaintiff has suffered severe emotional distress: anxiety, stress, depression; unwanted invasion of privacy, trespass, violation of Plaintiff's civil rights, loss of teacher contract being offered and inability to find suitable employment and undeterminable future earnings loss as a consequence.

(Id. at p.3) Read liberally, Plaintiff's Complaint may also advance allegations of state law, including trespass, interference with economic damage, common law invasion of privacy, and intentional infliction of emotional distress.

APPENDIX

Plaintiff's claims are based upon the allegation that "[u]known persons, who may or may not be employees of the defendants or may be employees of a government entity, operated a highly technological eavesdropping and visual surveillance device, likely a satellite, to servile [sic] Plaintiff Anthony Wenc."(Plaintiff's Statement of Facts ("PSOF") ¶ 15) Plaintiff has

> deduced that. . . Interceptions occur from the source, me, via the eavesdropping device, then are relayed back to the broadcaster's studio into broadcasting equipment operated by employees who likely are divulged the interceptions, and then they in turn culminate the process by disseminating it to the 'anchor' broadcaster into the 'talking ear' device worn in a 'live' program, who can then report instantly the original eavesdropped interceptions.

(Plaintiff's Affidavit #2, ¶26) Plaintiff states that he "believe [s] the surveillance activities were conducted by CNN and/or ABC, or an unknown party, who then knowingly disseminated the information to knowing and willing recipient affiliates KVOA, KGUN, KOLD, KNST and perhaps other unknown affiliates." (Id. at ¶4) According to Plaintiff, national and local anchorpersons[2] appearing on Defendants' broadcasts "were recipients [of such transmissions] or have knowledge of eavesdropping interceptions and visual surveillance of [Plaintiff]." (Id. at ¶¶*27-34) In* his affidavit and statement of facts in support of his opposition to Defendants' motions, Plaintiff identifies several instances that he argues support his contentions. For example, Plaintiff states that on May 22, or 23, 1995, while he was watching the show *Crossfire* that is aired live on CNN a sheriff's deputy and a federal special agent, both undercover, visited his home and after identifying themselves, stayed for approximately *5-10* minutes to ask Plaintiff questions.[3] (Id. at ¶¶5, 9b) Soon after the officers left, "Michael Kinsley,[4] said the following out of the ordinary 'in disguise' remark: 'he is cooperating with federal agents.'" (Id. at ¶9b) Soon thereafter, Plaintiff was watching *Newsnight,* a live broadcast on CNN, when between stories, host Kathleen Kennedy said "'we're going to clear you.' (Clear me of the rumors circulating I presume.) While saying this, she tilted her head towards her shoulder, to me [sic] signal she was referring to me, as this was how my head was positioned while I was relaxing on the couch watching. It is this action that led me to aghastly realize some sort of visual/video surveillance was taking place." (Id. at ¶9c) Additionally, in late 1995 or early 1996, CNN *Capital Gang* host Robert Novak "made the out of the ordinary and 'in disguise' remark: 'he wants a trial.' I was watching the show." (Id. at ¶9e)

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[2] A sampling of the anchorpersons whom Plaintiff lists includes Kathleen Kennedy, Barbara Walters, Sam Donaldson, Cokie Roberts, David Brinkley, Patti Weiss, Guy Atchley and Alan Kath. (Plaintiff's Affidavit #2, ¶¶27-34)

According to Plaintiff, various broadcasters have also made "in disguise" comments directed at him unrelated to the officers' visit to his home. For example, during a live weather report that aired on KOLD in early 1996, the broadcaster "made a subtle 'in disguise' remark directed at Plaintiff saying 'you have a lot to live for,' referring to my thoughts of depression and suicide." (Id. at ¶9i) Also in 1996, Chuck Roberts of CNN's *Headline News* "made the following subtle 'in disguise' remark apparently to get my attention: 'He got

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[3] Plaintiff does not describe the purpose of the officers' visit or the subject of their questions.

[4] Plaintiff lists Kinsley as a CNN employee. (Plaintiff's Affidavit, #2, ¶27).

up late today.' This was said in between story segments...I had just gotten up a few minutes earlier and put the TV on." (Id. at ¶9m) Further according to Plaintiff KVOA broadcast portions of his employment evaluation on May 25, 1995. (Id. at ¶9d) Plaintiff states that various anchorpersons working for all Defendants have made "in disguise" comments directed at him to get his attention. (Id. at ¶¶9-a-c,e, f, h-m) Moreover, Plaintiff asserts that Defendants maintain archives pertaining to their surveillance of him. (Id. at ¶13)

Between June and September 1995, Plaintiff was shot at by someone with a BB gun while Plaintiff was in his apartment. (Id. at ¶20) The shot came through his window and came directly to where Plaintiff was sitting. (Id.) According to Plaintiff, "I believe this shooting was promoted due to the excessive surveillance conducted by those named in this Civil Action and dissemination of that information being conducted on me. Furthermore, I believe that if any further dissemination 'leaks' regarding any of the libels mentioned in this affidavit, or any excessive publicity could again lead to potential life threatening physical harm. Due to this, I feared filing any type of lawsuit related to this Civil Action until I believed the surveillance being conducted on me ceased for I feared a public 'media circus,' as Oprah Winfrey[ˋ] is a very famous person which is certainly a story the media would like to 'feed off' to enhance ratings, which is in part, their reasons for surveillance." (Id.) Plaintiff also feared that the publicity would result in "possible physical harm as violent hate crimes often occur against innocent people. There are a lot of 'nuts,' for lack of a better term, living in this world." (PSOF, ¶77)

[ˋ] Plaintiff states that in July 1990, Oprah Winfrey aired a libelous show regarding him and some of the guests were Plaintiff's childhood acquaintances. (Plaintiff's Affidavit #2, ¶12)

Also in the Spring of 1995, Plaintiff heard students in his classes remark that the government was using Plaintiff for experiments, that Plaintiff "is the talk of the whole town," and that Plaintiff was gay or a child molester. (Plaintiff's Affidavit #2, ¶¶6-8) Plaintiff states that he never committed a sex crime and has never been charged with same. (Id. at ¶8) During this same time, hosts of *The Legal Hotline Show* airing live on KNST discussed the statute of limitations in civil cases regarding minors that included civil actions about child molestation cases. (Id. at ¶9a) Near the end of the discussion, "one of the hosts made the comforting remark 'OK, Tony.' Given this comment, ~t would obviously appear these hosts and thus KNST, knew that I was listening to the show." (Id.)

According to Plaintiff, broadcasters are not the only people speaking about him but strangers at the Cochise County Young Republican Club, the Elks Lodge, the Tucson Mall, and the University of Arizona Law Library have talked about him or have repeated phrases from conversations Plaintiff had earlier in the privacy of his home. (Id. at ¶¶22-25; PSOF, ¶¶40-43) For example, at the Elks Lodge, Plaintiff overheard other attendees remark that "'He's on unemployment...they are both on unemployment' (The 'they' referring to me and my sister who also ate lunch there that day. She was also on unemployment at that time.) Another remark was 'satellite' as he directed towards my table." (Plaintiff's Affidavit #2, ¶*25)* In June 1995, while attending a dinner meeting for the Cochise County Young Republican Club, Plaintiff overheard someone remark that "'he was on CNN' as she directed towards Plaintiff's table." (PSOF, ¶41) Plaintiff's colleagues have also told him that they know that he isn't gay. (Plaintiff's Affidavit #2, ¶21) Plaintiff's colleagues have also stated that "'he's Roman Catholic' and that "'he's a good Catholic.'" (Id.) Therefore, Plaintiff contends that "students, colleagues, and supervisory personnel had knowledge or awareness that Plaintiff was under some sort of eavesdropping and monitoring surveillance." (PSOF, ¶39)

On April 16, 1996, Plaintiff canceled expanded cable service to eliminate CNN and Headline News. (Plaintiff's Affidavit #2 at ¶10) However, on June 1, 1996, the local cable company rearranged the channels and placed Headline News on a channel which would allow Plaintiff to view the program despite his earlier cancellation. (Id.)

In October 1996, Plaintiff filed a complaint with the Federal Communications Commission ("FCC") related to claims in the instant action. (Id. at ¶18) The FCC informed him that his complaint did not fall within the FCC's jurisdiction and was instead a criminal matter within the FBI's jurisdiction. (Id.) On March *25,* 1997, Plaintiff filed a complaint with the local FBI office in Sierra Vista, Arizona. (Id. at ¶19)

Plaintiff states that Defendants conducted the eavesdropping and monitoring activities "for newsgathering' [sic] or other purposes due to his occupation as a teacher, membership in the Republican Party, membership as a Roman Catholic, and, in part, due to previous media attention of him in 1990." (PSOF, ¶29) In his affidavit, Plaintiff avows that he is a member of the Republican Party and that he served as precinct Committeeman for the Sierra Vista Thunderbird precinct between 1994 and 1996. (Plaintiff's Affidavit #1, ¶1) Plaintiff was also a member of the now dissolved Cochise County Young Republican Club. (Id.) Plaintiff also avows that he has been a practicing Roman Catholic all of his life. (Id. at ¶2)

In support of their motions, Defendants filed the following affidavits. Defendant KOLD filed an affidavit by Jeff Sales, the vice president and general manager of KOLD. (Sales Affidavit, ¶1 attached to KOLD's SOF) Therein, Sales states that he is aware of the activities of KOLD employees and to the best of his knowledge KOLD and its employees have not conducted any visual surveillance eavesdropping or any type of eavesdropping of Plaintiff at any time. (Id. at ¶2) Nor to the best of Sales' knowledge has KOLD and its employees conducted any type of surveillance or eavesdropping involving Plaintiff utilizing "aural satellite and/or microwave technology and/or a laser device or other prohibited radio eavesdropping devices." (Id. at ¶3) Sales also avows that KOLD does not own or possess any satellite surveillance equipment, microwave surveillance equipment or laser surveillance devices, (Id. at ¶4) Further, to the best of Sale's knowledge, KOLD has not received transmissions, images, data, recordings or any other information from any other media source involving visual or aural surveillance of or eavesdropping on Plaintiff. (Id. at ¶5) Additionally, KOLD archives do not contain any data, information, images or recordings of Plaintiff that were or could have been acquired through any sort of visual or aural surveillance or eavesdropping (Id. at ¶6)

Debbie Wagner, Vice President and general manager of KNST-FM and SFX Broadcasting filed an affidavit setting forth statements similar to those contained in the Sales affidavit. (Wagner Affidavit attached to KNST's Joinder) Jon Ruby, who is President and general manager of KVOA filed an affidavit with similar statements as those made by Sales. (Ruby Affidavit attached to KVOA's Statement of Fact) In a supplemental affidavit, Ruby states that in light of Plaintiff's assertion that KVOA aired his employment evaluation on May25, 1995, Ruby reviewed the scripts for the four news shows airing on that date and that "[t]here is no mention of Mr. Wenc, or any broadcast of the interview referenced in his Affidavit in the Day Break, 5:00 pm. or 10:00 p.m. shows; there is no script for the 6:00 p.m. show since it was a live show which dealt exclusively with the CAP Town Hall." (Ruby Supplemental Affidavit, ¶3) Karen Rice, the general manager of KGUN also filed an affidavit with statements similar to those made by Sales. (Rice Affidavit attached to KGUN's Statement of Facts) Additionally, Rice avowed that

KGUN is not affiliated or associated with any federal or state agency or political subdivision. (Rice Affidavit, ¶3)

DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Because resolution of Defendants' motions requires consideration of matters outside the pleadings, the Court informed the parties that the motions would be treated as motions for summary judgment as required by Federal Rule of Civil Procedure 12(b). (December 1997 Order) Defendants primarily argue that the Court lacks jurisdiction over Plaintiff's federal claims and that Plaintiff fails to state a claim for any of the alleged violations of state law. The arguments advanced by the parties will be discussed below in relation to each claim alleged in Plaintiff's Complaint.

Standard for Summary Judgment

Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. *P.56(c).*

The initial burden rests on the moving party to point out the absence of any genuine issue of material fact. *Celotex Corp. V. Catrett,* 477 U.S. 317,323 (1986). Although reference is made to the movant's "burden," Rule *56* places no evidentiary burden on the moving party beyond that which is required to prevail at trial. Therefore, while the adverse party must offer evidence sufficient to raise a genuine issue of fact on an issue for which that party has the burden of proof, the moving party need provide nothing more than a reference to those materials on file in the case that support the movant's belief that there is an absence of any genuine issue of material fact. *Musick V Burke,* 913 F.2d 1390, 1394 (9th Cir. 1990). Once satisfied, the burden shifts to the opponent to demonstrate through production of probative evidence that an issue of fact remains to be tried. *Celotex,* 477 U.S. at 324. Indeed, a party opposing summary judgment may not rest on its pleading. Fed. R. Civ. *P.56(e).*

When judging the evidence at the summary judgment stage, a district court is not to make credibility determinations or weigh conflicting evidence but the court is required to view all inferences in the light most favorable to the non-moving party. *Musick* 913 F.2d at 1394. The ultimate question is whether the evidence "presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson V. Liberty Lobby, Inc.,* 477 U.S. 242, 251-52 (1986). The mere existence of a scintilla of evidence supporting the non-movant's position will be insufficient; there must be evidence from which the jury could reasonably find for the non-movant. *Anderson,* 477 U.S. at 252. If the factual context makes the non-movant's claim implausible, that party must come forward with more persuasive evidence to support its claim than would otherwise be necessary. *Matsushita Elec. Jndus. Co.* V. *Zenith Radio Corp.,* 475 U.S. 574, 587 (1986).

Plaintiff's claim pursuant to 18 U.S.C. § 241

Plaintiff alleges that Defendants violated 18 U.S.C. §241. Section 241 provides "for criminal liability against persons who conspire to 'injure, oppress, threaten, or intimidate' any citizen in the free exercise of any right secured by the Constitution." *Larsen V. Larsen,* 671 F.Supp. 718, 719 (D.Utah 1987), *aff'd* 871 F.2d 1095 (*10*th Cir. 1989). The federal courts including the Ninth Circuit have held that 18 U.S.C. §241 which is a criminal provision does not provide a private right of action for civil liability. *Aldabe*

V. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980); *Cox v. Cosentino,* 876 F.2d 1, 2 (1st Cir. 1989)("Only the United States as prosecutor can bring a complaint under 18 U.S.C. §§241-242"); *Del Elmer V. Metzger,* 967 F.Supp. 398, 403 (S.D.Cal. 1997); *Powers V. Karen,* 768 F.Supp. 46, 51 (E.D.N.Y. 1991), *aff'd* 963 F.2d 1522 (2nd Cir. 1992); *Larsen,* 671 F.Supp. at 719; *Lundt v. Hodges,* 627 F.Supp. 373,375 (N.D.Iowa *1985);Pawelek v. Paramount Studios Corp.,* 571 F.Supp. 1082, 1083 .D.Ill. 1983). Indeed, Plaintiff concedes that he cited section 241 in his Complaint merely for the premise that Defendants' alleged "tortious conduct was indeed criminal." (Plaintiff's Response, p.11) Therefore, Plaintiffs' claim pursuant to 18 U.S.C. §241 should be dismissed.

Plaintiff's claims pursuant to 18 U.S.C. §§ 2511-2512

18 U.S.C. §§2511-2512 are part of the statutory scheme addressing interception of oral, wire, and electronic communications. *See* 18 U.S.C. §§2510-2520 ("the Federal Wiretap Statutes").. Generally, section 2511 provides for criminal liability in cases of prohibited interception, use and disclosure of wire, oral or electronic communications except in certain circumstances. 18 U.S.C. §2511. Generally, section 2512 provides for criminal liability in cases of prohibited manufacture, distribution, possession or advertising of wire, oral and electronic communication devices except in certain circumstances. 18 U.S.C. §2512. While sections 2511 and 2512 are criminal statutes which do not provide a private cause of action for civil liability, 18 U.S.C. section 2520 authorizes a civil cause of action for any person "whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of,' the Federal Wiretap Statutes against any "person or entity which engaged in that violation." 18 U.S.C. §2520; *Boddie* V. *American Broad. Co.*

731 *F.2d* 333, 336 (6th Cir. 1984). Because the provisions of the Federal Wiretap Statutes cited by Plaintiff address only criminal liability, Defendants argue that Plaintiff does not have a private cause of action for civil liability pursuant to the sections cited in the Complaint. Additionally, Defendants argue that Plaintiff would fare no better under section 2520[6] in light of the affidavit testimony from KGUN, KVOA, KOLD and KNST that they have not intercepted, used or disclosed any wire or oral or electronic communications involving Plaintiff and that they do not possess or advertise wire, oral and electronic communication intercepting devices. (KGUN/Rice Affidavit, ¶¶4-7; KOLD/Sales Affidavit, ¶¶2-5; KVOA/Ruby Affidavit, ¶¶3-6; KNST/Wagner Affidavit, ¶¶*2-5)*

In response, Plaintiff states that he "is not trying to prosecute alleged violation of these federal criminal statutes.'" (Response, p.11, n.16 quoting KOLD's Motion to Dismiss, p.2). Instead, Plaintiff asserts that the Federal Wiretap Statutes are relevant to the Complaint "as they attribute as a matter of law...that the tortious conduct was indeed criminal." (Id. at p.11) Regardless of whether Plaintiff intended to state a claim pursuant to sections 2511 and *2512,* Defendants are correct that these sections alone do not provide a private cause of action. *See Boddie, 731* F.2d at *336.* Therefore, to the extent that Plaintiff's Complaint may be construed as alleging criminal liability pursuant to 18 U.S.C. §§2511 and 2512, the claims should be dismissed.

Moreover, it is clear on the record that Plaintiff is unable to establish a claim pursuant to section 2520 which provides for civil liability for violation of the Federal Wiretap Statues. To establish a *prima facie* case under section *2520,* Plaintiff must allege that (1) Defendants intercepted, disclosed or used his oral communication, (2) that Plaintiff had an expectation that the communications were not subject to interception, and (3) that Plaintiff's expectation of privacy was justified under the circumstances. *Cross V. State of Ala.*, 49 F.3d 1490, 1508-09 (11th Cir. 1995). Plaintiff's affidavits fail to point to specific instances tending to show that Defendant intercepted, disclosed, or used any of Plaintiff's oral communications. Instead Plaintiff describes how media commentators made "in disguise" comments that he inferred were directed at him because of the position of Plaintiff's head while he was watching the program, because Plaintiff had "thoughts of depression," because Plaintiff connected the remarks to his own desires such as the fact that he wanted a trial, or because Plaintiff connected the remarks to events that were transpiring in his life. (PSOF, ¶¶53,61,56) However, Plaintiff has failed to establish a question of material fact that these "in disguise" remarks were linked to any oral communication that he made.[7] Further, Plaintiff's assertions that people made comments about him at work, the Elks Club, the opera, the law library, and other public places does not support his contentions that the comments he overheard resulted from any purported violation of the Federal Wiretap Statutes by the instant Defendants or any other person or entity.[8] If the factual context makes the non-movant's claim implausible, that party must come forward with more persuasive evidence to support his claim than would otherwise be necessary.

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[6] Plaintiff does not allege a claim pursuant to 18 U.S.C. §2520 in his Complaint.

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[7] The one instance where Plaintiff alleges that his oral assertions may have been intercepted concern his employment evaluation which he contends was broadcast on KVOA. However, KVOA has submitted affidavit testimony that KVOA's records indicate that evaluation was not shown.

[8] Indeed, Plaintiff admits as much when he states that "unknown persons who may or may not be employees of Defendants or may be employees of a government entity" are conducting the surveillance. *(Plaintiff's Affidavit #2,¶33)*

Matsushita Elec. Indus. Co., 475 U.S. at 587. Here, Plaintiff has provided no factual basis for the assertions in his Complaint or affidavits to support a claim that Defendants are subject to civil liability under 18 U.S.C. *§2520.* Therefore, even construing Plaintiff's claims pursuant to section 2520 is of no assistance to Plaintiff in establishing a question of material fact as to this Court's jurisdiction over his action and therefore Defendants' motions which the Magistrate Judge has construed as motions for summary judgment should be granted as to Plaintiff's claim pursuant to the Federal Wiretap Statutes and the claim should be dismissed.

Plaintiff's claims pursuant to 47 CFR *§15.9* and 47 CFR §2.701[9]

Title 47 of the *Code of Federal Regulations* governs telecommunication matters. The FCC promulgated these regulations under authority of the Federal Communications Act of 1934 ("FAA"). 47 U.S.C. § 151 *et. seq.* Federal courts, including the United States Supreme Court, have recognized that the purpose of the FAA is regulation in the public interest and not the creation of private rights. *Scripps vs. Howard Radio Inc., V. Federal Communication Comm.*, 316 U.S. 4 (1942); *Daly V. Columbia Broad. Sys., Jnc.*, 309 F.2d 83 (7th Cir. 1962); *Central NY Right to Life Federation* V. *Radio Station WJBX., 479* F.Supp. 8 (N.D.N.Y. 1979). Additionally, vindication of the important public interest served by the FCA is vested with the FCC where an aggrieved person may, in the proper circumstances, obtain relief from the FCC. *Central N* Y,479 F.Supp. at 10. *See also Boddie,* 731 F.2d at 339 (district court dismissed plaintiff's claim under FCC regulations including §§2.701 and 15.11[10] prohibiting eavesdropping because "primary jurisdiction for the enforcement of the regulations was vested in the [FCC]" and the appellate court held that plaintiff's allegations of violation of these regulations was properly excluded from trial on charges filed pursuant to the Federal Wiretap Statutes). Therefore, Defendants argue that the regulations cited by Plaintiff do not create a private right of action.

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[9] 47 CFR 15.9 provides: "Prohibition against eavesdropping. Except for the operations of law enforcement officers conducted under lawful authority, no person shall use, either directly or indirectly, a device operated pursuant to the provisions of this part for the purpose of overhearing or recording the private conversations of others unless such use is authorized by all of the parties engaging in the conversation." 47 CFR 2.701 provides: "Prohibition against use of a radio device for eavesdropping. (a) No person shall use, either directly or indirectly, a device required to be licensed by section 301 of the Communications Act of 1934, as amended, for the purpose of overhearing or recording the private conversations of others unless such use is authorized by all of the parties engaging in the conversation. (b) Paragraph (a) of this section shall not apply to operations of any law enforcement officers conducted under lawful authority.

[10] Section 15.11 is the predecessor to section *15.9. See 54* FR. 17714 (April 25, 1989).

In response, Plaintiff cites to the provision in the FCA governing carriers' liability for damages which provides that, in certain instances, a "common carrier"[11] shall be liable to the person... injured." 47 U.S.C. §206.

Plaintiff's reference to section 206 does little to support his position because Plaintiff did not plead a violation of section 206. Moreover, section 206 is inapplicable to the instant action because radio and television broadcasters are not common carriers under the FCA. *United*

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[11] "Common carrier or carrier means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is engaged, be deemed a common carrier." 47 U.S.C. §153(h).

States V. Radio Corporation, 358 U.S. 334, 348-49 (1959). Additionally, Plaintiff's citation to section 206 merely emphasizes that Congress expressly created a private cause of action when such a right was intended under the FCA. Because Plaintiff has failed to establish that a private cause of action is available under 47 C.F.R. *§§15.9* and 2.701, his claims pursuant to these regulations should be dismissed. *See Boddie, 731* F.2d at 339.

- Plaintiff's claim pursuant to 42 U.S.C. § 1983

The Supreme Court has recognized that "to state a claim under section 1983, a plaintiff must allege the violation of a right secured by the Constitution and the laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Catkins,* 487 U.S. 42, 48 (1988). Defendants argue that the Court lacks jurisdiction over Plaintiff's section 1983 claim because Plaintiff cannot satisfy' the requirement that Defendants have acted under color of state law in conducting the alleged surveillance. It is unclear from Plaintiff's Complaint and Response whether he is asserting that Defendants are governmental actors under state or federal authority. Section 1983 only applies to state action. Where only federal action is alleged, the claim is to be brought under *Bevies V. Six Unknown Named Agents of the Fed. Bur. of Narcotics,* 403 U.S. 388(1971), instead of section 1983. *Morse* V. *North Coast Opportunities, Inc., 118* F.3d 1338, 1340 (9th Cir. 1997). However, whether Plaintiff's action is filed pursuant to section 1983 or *Bivens* need not be resolved at this time because the standard for determining the existence of government action is the same in both cases. *ID.* at 1340, 1343. Therefore, even though the parties and the Court refer to state action under section 1983, the references are interchangeable with federal action necessary for a *Bivens* claim for purposes of this discussion.

The Ninth Circuit has stated that "[a] fundamental requi-rement of section 1983 is that the challenged action must have been taken 'under color of state law'" *Canlis V. San Joaquin Sheriff's Posse,* 641 F.2d 711, 716 (9TH Cir. 1981)(footnote setting out text of section 1983 omitted). Indeed, "[s]tate action is an essential jurisdictional predicate under section 1983, and accordingly, if state action is not alleged and is found lacking, the complaint must be dismissed." *Sampson V. Village Discount Outlet, Inc.,* 832 F.Supp. 1163, 1167 D.Ill. 1993), *aff'd.* 43 F.3d 1474 (7th Cir. *1994)(citing National Collegiate Athletic Assoc. V. Tarkanian,* 488 U.S. 179 (1988); *Gomez V. Toledo,* 446 U.S. 635 (1980)).

To determine whether the conduct of private parties amounts to governmental action, the Ninth Circuit applies the following four tests, (1) the governmental nexus test, (2) the public function test, (3) the state compulsion test, and (4) the joint action test. *Berger* V. *Hanlon,* 129 F.3d *505,* 514 (9th/Cir. *1997), petition for cert. filed,* 66 USLW 3783 (U.S. May 1998)(No. 97-1927).

Without stating which test applies, Plaintiff argues that "[m]edia broadcasters, generally are state actors'" despite Defendants' assertion to the contrary. (Response, p.8) Plaintiff further argues that Defendants are state actors in their normal course of business when they work "in direct concert with law enforcement" to notify the community regarding the release of sexual offenders, when they broadcast shows such as *Cops, America's Most Wanted, Judge Judy,* and *The People's Court,* when they provide public assistance through the Emergency Broadcast System, and when they broadcast the state lottery results. (Id. and 1997 Letter from Arizona State Lottery attached to PSOF)

Other examples of Defendants' purported governmental action cited by Plaintiff include state Attorney General Grant Woods' regular radio broadcast on a Phoenix station that is not a party to this suit and the recent showing of the CIA's video reenactment of TWA Flight 800. (Id. at p.9) Plaintiff further stresses that state officials were present on Defendants' premises for interviews or other broadcasts. (Id. at p.10) Additionally, Plaintiff argues that the presence of law enforcement officers on his property and at his work site also suggests that Defendants were acting in concert with state officials. (Id. at pp. 9-10)

Plaintiff also cites to *Berger* where the Ninth Circuit held that CNN was a government actor for purposes of a *Bivens* action where CNN and federal agents entered into a written contract for CNN reporters to accompany agents during the execution of a search warrant. *Berger,* 129 F.3d *505.* The *Berger* plaintiff also alleged that the government shared confidential information with CNN and that the record suggested that the federal officers "planned and executed the search in a manner designed to enhance its entertainment, rather than its law enforcement value, by engaging in, for example, conversations with [the plaintiff] for the purpose of providing interesting sound bites, and to portray themselves as tough, yet caring investigators, rather than to further their investigation." *Id. at 515.*

To defeat summary judgment, Plaintiff must establish a question of fact as to whether Defendants are government actors under one of the four tests discussed above. Under the governmental nexus test, courts must consider whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the government itself. *ID.* at 514. Moreover, "an action taken by a private corporation is not necessarily or automatically 'state action' merely because the corporation is chartered by the state, or because the corporation has a state conferred monopoly, or because the activities of the corporation are strictly regulated by the state, or because the functions *performed by the corporation serve the public convenience and necessity." Briscoe V. Bock 540* F.2d 392, 395 (8th Cir. 1976)(emphasis added). Indeed, the licensing of an otherwise private entity under the FCA does not, of itself, require a finding of state action. *Kuczo V. Western Conn. Broad., 566* F.2d 384 (2d Cir. 1977); *Bloum V. Loyola Univ.*, 506 F.2d 20, 22 (5th Cir. *1975). See also Canlis,* 641 F.2d at 716 ("The mere filing of a Charter.. without more, does not constitute a 'sufficient nexus.'"). In the instant case, there is nothing to indicate that there is any connection between the alleged surveillance activities and Defendants' regulation by government entities, the presence of government officials on Defendants' premises at various times, Defendants' broadcasts regarding the release of sexual offenders, broadcasts of shows mentioned by Plaintiff such as *The People's Court,* or broadcasts of the state lottery results, Woods' show or the CIA video reenactment. Therefore, Plaintiff has failed to establish that Defendants' alleged surveillance activities constitute state action under the governmental nexus test.

Under the public function test, state action is present when a private entity exercises functions traditionally and exclusively reserved to the state. *Berger,* 129 F.3d at 514. An entity may be a state actor for some purposes but not for others." *George V. Paczfic-CSC Work Furlough,* 91 F.3d 1227, 1230 (9th Cir. 1996). *See also Robison V. Canterbury Village, Inc.*, 848 F.2d 424, 429 (3d Cir. 1988)("The logical determinant must be whether the actions challenged as unconstitutional are performed in the exercise of the actor's governmental or public functions, rather than in the actor's private capacity.") Plaintiff provides no allegations to support the conclusion that Defendants are government actors under the public function test. Indeed, radio and television broadcasts are not "traditionally the exclusive prerogative of the government" and Plaintiff has pointed to no authority to the contrary. *Morse,* 118 F.3d at 1343. Accordingly, Plaintiff has failed to demonstrate a genuine issue of material fact regarding whether Defendants' alleged surveillance constitutes state action under the public function test.

The state compulsion test requires a showing that the state is responsible for the decision of the private entity because the state exercised coercive power or provided such significant encouragement, either overt or covert, that the decision must in law be deemed to be that of the state. *Berger,* 129 F.3d at 514. *See also Morse,* 118 F.3d at 1342-43 (collecting Ninth Circuit decisions holding that without governmental encouragement or coercion, actions taken by private corporations pursuant to federal law do not transmute into government action and holding that actions of private entity were not governmental action where no state regulation or policy compelled the offensive action.) In the instant case, Plaintiff has neither alleged facts nor pointed to evidence tending to show that the state or federal government somehow compelled, forced or coerced Defendants into conducting the alleged surveillance. Accordingly, Plaintiff fails to defeat Defendants' motions regarding this issue.

Under the joint action test, private actors can be considered government actors if they are willful participants in joint action with the government or its agents. *Berger,* 129 F.3d at 514. Therefore, the Ninth Circuit has recognized that the joint action test requires a substantial degree of cooperative action between the government and the private party. *Id.* at 515 *(citing Collins V. Womancare,* 878 F.2d 1145, 1154 (9th Cir. 1989)). Plaintiff misplaces reliance on the *Berger* case to show that Defendants are governmental actors under the joint action test. In *Berger,* the plaintiffs defeated summary judgment by presenting evidence tending to show that the media not only arrived with the federal agents who executed the search, but that the government shared confidential information with the media, the government planned and executed the search in a manner designed to enhance its entertainment value, and that the government entered into a written contract with the media station. JCL at *515*. The court held that "the inextricable' involvement of the media with both the planning and execution of this search, the government's active involvement with the media's news gathering activities, and the mutually-derived benefits, is more than enough to make the media government actors." *Id.* In so holding, the *Berger* court distinguished cases where private parties including the media were not found to be joint government actors because, unlike CNN in *Berger*, those parties did not collaborate with the government to conduct a search for their own benefit. *Id. See e.g. Parker v. Boyer*, 93 F.3d 445, 448 (gth Cir. 1996), *cert. den.*, 117 S.Ct. 1081 (1997)(media videotaping police search and seizure did not constitute action under state law because neither the media station "nor the police assisted the other in the performance of their separate and respective tasks.") In the instant case, Plaintiff neither alleges in his Complaint nor does he point to any probative evidence whatsoever establishing a material question of fact as to whether Defendants and the state or federal government cooperated or were inextricably involved in conducting the alleged surveillance. Indeed, Plaintiff has identified no specific activities that Defendants conducted in connection with state or federal authority. Instead, Plaintiff points to on-air statements that he interprets to be personally directed at him. Because Plaintiff has failed to establish a genuine issue of material fact regarding whether Defendants are governmental actors under any of the four tests applied in the Ninth Circuit, Plaintiff's section 1983 claim should be dismissed.

Plaintiff's claim pursuant to 42 U.S.C. §1985

Section 1985 sets forth three subsections under which an action may be brought. Plaintiff's Complaint does not indicate which subsection applies. However, in his Response, Plaintiff argues that he has a claim under each subsection. Therefore, the viability of Plaintiff's action pursuant to each subsection of section *1985* is discussed below.

Section 1985(1)

Section 1985(1) provides:

> Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties.

42 U.S.C. *§1985(1).*

Plaintiff argues that he has a claim under section 1985(1) in light of his "status as an officer of the State of Arizona as both a secondary teacher in a public school and as a Precinct Committeeman." (Response, *p.2)(See also* Plaintiff's

Bachelor of Arts Degree in Education attached to Plaintiff's Affidavit #2; 1994 certificate of election as Precinct Committeeman of the Republican Party for the Sierra Vista Thunderbird Precinct of Cochise County, Arizona attached to PSOF)

The Ninth Circuit has stated that the "clear import of [section *1985(1)]* is that the statute's protections extend exclusively to the benefit *of federal* officers." *Canlis,* 641 F.2d at 717, 718 (emphasis added)(dismissing section 1985(1) claim for lack of jurisdiction where plaintiff was a county, not federal, official). *See also Robison,* 848 F.2d at 430, *n.5* (Section 1985(1) "governs interference with the duties of federal officers only.") Plaintiff's status as a teacher and as a precinct committeeman do not establish his status as a federal officer under section 1985(1). Moreover, Plaintiff has offered no probative evidence suggesting that Defendants' alleged conduct interfered with Plaintiff's duties as a teacher or a precinct committeeman. Accordingly, Plaintiff's claim pursuant to section *1985(1)* must fail.

Section 1985(2)

Section 1985(2) provides:

> Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to

> injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

42 U.S.C. §1985(2). Section 1985(2) can be divided into two parts. *Sampson*, 832 F.Supp. at 1168. "[T]he first part pertains to the administration of justice in the federal judicial system, and the second part relating to conspiracies to obstruct the course of justice in state courts." *Id.* (omitting internal quotations)

To establish a claim for relief under the first clause of section *1985(2)*, Plaintiff must show (1) a conspiracy between two or more persons, (2) to deter a party or witness by force, intimidation or threat from attending federal court or testifying freely in a matter pending in federal court, which (3) causes injury to Plaintiff. *Herrera v. Scully*, 815 F.Supp. 713, 726 (S.D.N.Y. 1993). *See also Sampson*, 832 F.Supp. at 1 168("plaintiff must allege a nexus between an alleged conspiracy and a federal court proceeding.") The Ninth Circuit has recognized a split among the circuits regarding whether "attending" federal court refers to one's physical presence while attending or testifying, or whether one is deemed to have attended court from the moment that the person files a complaint. *Portman v. County of Santa*

Clara, 995 F.2d 898, 910 (9th Cir. 1993). The *Portman* court declined to address the issue. *Id.*

In his Response, Plaintiff states that Defendants eavesdropped on his calls to legal counsel and to the Clerk of the Court. However, Plaintiff makes no statements in either of his affidavits to this effect, nor does he offer any evidence tending to show that such eavesdropping occurred. Plaintiff further asserts that "[d]ue to the circumstances and sensitive facts...the fear of outright widespread publicity and any implications associated with that effectively hindered Plaintiff from filing that action. The matter is complicated.. facts pertain to Plaintiff as a minor, coupled with potential physical bodily harm to Plaintiff caused from a 'media circus.'" (Response, p.3) In his affidavit, Plaintiff relates that sometime between June and September 1995, prior to commencement of the instant action, he was shot at with a BB gun. (Plaintiff's Affidavit #2, ¶20). According to Plaintiff the incident placed him in fear of filing suit. (Id.)

Even taking Plaintiff's statements as true and undisputed, such statements do not establish a cause of action pursuant to the first clause of section 1985(2) under either interpretation discussed in *Portman*. Plaintiff states that Defendants' purported conduct kept him from initially filing suit, not that they interfered with the action once suit was filed. Moreover, Plaintiff does not allege or establish that Defendants conspired to keep him from attending federal court proceedings. Such assertions fail to state a claim under section 1985(2). *See Herrera*, 815 F.Supp. at 726. Indeed, Plaintiff cites no other federal court proceeding than the instant action, and there have been no proceedings requiring Plaintiff's physical attendance in this action nor has Plaintiff alleged or shown that Defendants kept him from pursuing the instant action once it was filed. Additionally, Plaintiff has failed to allege or to provide facts suggesting the meeting of the minds necessary to establish his conspiracy claim. *See*

Sampson, 832 F.Supp. at 1168 (plaintiff "is required to show that there was a single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences."(omitting internal quotations)); *Morast V. Lance*, 631 F.Supp. 474 ~.D.Ga. 1987), *aff'd.* 807 F.2d 926 (11th Cir. 1986)(conclusory assertions that the defendants conspired to deter the plaintiff as witness by force, intimidation or threat are insufficient to support a claim). Accordingly, because Plaintiff has failed to establish any genuine issue of material fact regarding whether Defendants conspired to injure Plaintiff or any witness for having attended or testified in any federal court, this Court does not have jurisdiction over Plaintiff's action pursuant to the first clause of section 1985(2).

The second clause of section *1985(2)* relates to conspiracies to obstruct the course of justice in state court with the intent to deny any citizen the equal protection of the laws. *Sampson*, 832 F.Supp. at 1168. Thus, the second clause of subsection two "prescribes conspiracies to deny or interfere with equal protection rights.,' *ID.*

Plaintiff neither alleges nor provides evidence that Defendants conspired for the purpose of obstructing justice in state court with the intent to deny Plaintiff or anyone else equal protection of the laws. Additionally, as with his claim under the first clause of *1985(2)*, Plaintiff has failed to establish any factual basis to support a conspiracy in violation of section *1985(2)* among Defendants. Accordingly, the Court does not have jurisdiction under the second clause of section *1985(2)* to entertain Plaintiff's claims.

Section 1985(3)

Section 1985(3) provides:

Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. *§1985(3).* To prevail under section 1985(3), Plaintiff must allege and prove (1) a conspiracy, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, and (3) an act or furtherance of conspiracy, (4) whereby a person is either injured in his property or person or deprived of any right or privilege of a citizen of the United States. *Griffen V. Breckenridge,* 403 U.S. 88, 102-103 (1971). To be actionable under section 1985(3), the alleged conspiracy must be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *ID.* at 102.[12] Additionally, the Supreme Court has recognized that "[a] section 1985(3) private conspiracy 'for the purpose of depriving... any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws,' requires an intent to deprive persons of a right guaranteed against private impairment." *Bray, Alexandria Women's Health Clinic,* 506 U.S. 263, 274 *(1993)(quoting* 42 U.S.C. §1985(3)). The *Bray* Court further stated that "[a] conspiracy is not 'for the purpose' of denying equal protection simply because it has an effect upon a protected right. The right must be 'aimed at,'...its impairment must be a conscious objective of the enterprise.. the defendant [must] do more than merely be aware of a deprivation of right that he causes, and more than merely accept it; he must act at least in part for the very purpose of producing it." *ID.* at 275-76 (footnote omitted).

Plaintiff's Complaint contains no allegations that he is a member of a protected class sufficient to satisfy section 1985(3), nor does he allege facts to support a conspiracy among Defendants. In his Response, Plaintiff argues that his status as a teacher, a Roman Catholic and a Republican satisfies the requirement that he be the target of some class-based animus. Plaintiff cites cases suggesting that section 1985(3) may apply to conspiracies aimed against a person because of his political or religious affiliation. (Response, p.5) However, even if a claim of politically-motivated animus or religiously-motivated animus stated a violation under section 1985(3) it would do so only "when it states an interference with some fundamental right such as the right to vote." *California Republican Party* V. *Mercier,* 652 F.Supp. 928, 937 (C.D.Cal. 1986).

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[12] The *Griffen* Court declined to decide whether a conspiracy motivated by invidiously discriminatory intent other than racial basis would be actionable under section 1985(3). *Griffen,* 403 U.S. at 102, n.9.

In the instant case, Plaintiff has not to pointed to any evidence supporting his contention that Defendants and the state or federal government conspired to deprive him of any fundamental right. Additionally, Plaintiff has not pointed to any evidence supporting his contention that Defendants formed a private conspiracy among themselves to deprive Plaintiff of a protected right. Indeed, if Plaintiff were alleging a private conspiracy, he would also need to establish that the right Defendants conspired against was a right guaranteed against private impairment. The Supreme Court has recognized that section 1985(3) does not apply to private conspiracies that are aimed at a right that is by definition a right against only state interference. Bray, *506* U.S. at 278. In fact, the Supreme Court has observed that there are few rights protected against private as well as official encroachment. *ID.*[13] The Court has thus far only recognized the Thirteenth Amendment right to be free from involuntary servitude and the Thirteenth Amendment right of interstate travel as rights protected against public and private encroachment. *ID. See also Tilton V. Richardson, 6* F.3d 683, 686 (10 Cir. 1 993)(recognizing that the rights secured under the First Amendment, Fifth Amendment and Fourteenth Amendment are not protected against private encroachment).

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[13] In dicta, the *Bray* Court recognized that rights secured under the Fourth Amendment are not protected against private infringement. *506* U.S. at 278.

Although Plaintiff submitted evidence showing that he has a degree in education, that he is a Republican, and that he is a Roman Catholic, this evidence does little to support his claim that Defendants conspired against him for these reasons. None of the statements or actions which Plaintiff attributes to Defendants suggest that Defendants' alleged conduct was aimed at Plaintiff because he is a teacher, a Republican, or a Catholic. Nor does Plaintiff show facts suggesting a meeting of the minds among Defendants to single Plaintiff out for these reasons in order to deprive him of any right protected from private encroachment. Because Plaintiff has not alleged and cannot show that he was denied equal protection of the laws because of a class to which he belongs, Plaintiff's section 1985(3) should be dismissed.

Plaintiff's claim pursuant to 42 U.S.C. §1986

Section 1986 creates a further cause of action for those persons who have brought claims under section 1985. *Morast*, 631 F.Supp. at 479. Therefore, the law is well-settled that "a claim can be stated under section 1986 only if the complaint contains a valid claim under section 1985." *McCalden* V. *California Library Assoc.*, 955 F.2d 1214, 1223 (9th Cir. 1992). Because Plaintiff's claim under section 1985 fails, so too must Plaintiff's section 1986 claim. Accordingly, Plaintiff's section 1986 claim should be dismissed.

Plaintiff's claims pursuant to state law

Because the Court lacks subject matter jurisdiction over Plaintiff's claims brought pursuant to federal law, the only remaining claims are the state law claims. Whether to retain jurisdiction over the state law claims is a matter within the Court's discretion. 28 U.S.C. 1367(c)(3); *Cook, Perkiss and Liehe, Jnc.* V. *Northern Cal. Collection Serv., Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). When federal claims are dismissed before trial, the Ninth Circuit has held that "the proper exercise of discretion is to dismiss the pendent state claims as well." *Cook* 911 F.2d at 247. *See also Macro* V. *King County*, 126 F.3d 1125, 1129-30 (9th Cir. 1997), *cert den.* 118 S.Ct. 1178 (1988), ("a district court may decline to exercise supplemental jurisdiction if it has dismissed all claims over which it had original jurisdiction.")

Because the Court lacks subject matter jurisdiction over all of the federal causes of action advanced by Plaintiff the District Court should decline to exercise jurisdiction over the remaining state claims. *See Canlis*, 641 F.2d at 721 (affirming district court's dismissal of pendant state claims where section 1983 and section 1985 claims were dismissed); *Morse*, 118 F.3d at 1340 (same where section 1983 claim was dismissed).

PLAINTIFF'S MOTION TO COMPEL AND PLAINTIFF'S MOTION TO STAY

Plaintiff moves the Court to compel Defendants to respond to his outstanding discovery requests. Plaintiff argues that he cannot properly respond to Defendants' dispositive motions without the requested discovery. Additionally, Plaintiff requests the Court to stay ruling on the dispositive motions until after resolution of his requests.

Defendants respond that Plaintiff's discovery requests were served prematurely before the conference required by Fed.R.Civ.P. 26. Additionally, Defendants state that Plaintiff's discovery requests were over broad, sought voluminous information unrelated to the allegations, and sought the names and addresses of Defendants' employees. According to Defendants, none of the requests are relevant or calculated to lead to admissible evidence. Defendants also assert that a stay is unwarranted where the evidence sought is almost certainly nonexistent, or is the object of pure speculation. Defendants further assert Plaintiff has not explained how the discovery sought will prevent summary judgment.

The Magistrate Judge construes Plaintiff's Motion to Compel and Motion to Stay as a Motion pursuant to Fed.R.Civ.P. *56(f)*.[14] Rule *56(f)* provides that when a party opposing summary judgment cannot present facts "essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." Fed.R.Civ.P. *56(f)*. Whether to grant or deny a Rule *56(f)* motion is within the Court's discretion. *Terrell* V. *Brewer,* 935 F.2d 1015, 1017 (9th Cir. 1991); *Garrett* V. *City and County of San Francisco,* 818 F.2d 1515, 1518 (9th Cir. 1987). Plaintiff bears the burden of showing that the facts he hopes to discover will raise a material issue of fact and that the evidence sought exists. *Terrell,* 935 F.2d at 1018. Indeed the Ninth Circuit has held that "[d]enial of a Rule *56(f)* application is proper where it is clear that the evidence sought is almost certainly nonexistent or is the object of pure speculation." *Id.*

In support of his Motion, Plaintiff cites the Ninth Circuit's decision in *Garrett,* 818 F.2d at 1518. In *Garrett,* the Ninth Circuit held that the trial court should have granted a Rule 56(f) motion where the movant made clear the information sought, did not seek broad additional discovery, and indicated the purpose for which the information was sought. *Id.* at 1518-19.

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[14] Indeed, Plaintiff cites case law applying Rule *56(f)* in support of his Motion to Stay.

Plaintiff's discovery requests are the antithesis of those submitted by the *Garrett* plaintiff. Plaintiff seeks broad, voluminous discovery and he has not shown how the evidence sought will raise a genuine issue of material fact. Even if Defendants disclosed the information sought such as, for example, the identity of employees working for Defendants during April 1, 1995 to April 1, 1996, the identity of all guests appearing on various programs during April 1, 1995 to April 1, 1996, and the description of the technological processes regarding the talking ear device worn during live broadcasts and the altitudinal range of the satellites used, this information will not serve to raise a genuine issue of material fact regarding the existence of federal jurisdiction. Additionally, in light of the affidavits submitted by KGUN, KVOA, KOLD and KNST, the record supports the conclusion that it is speculative that any evidence exists that would enable Plaintiff to establish a genuine issue of material fact necessary to defeat Defendants' motions. Such a conclusion is further supported by Plaintiff's inability to allege anything but conclusory facts suggesting a link between Defendants' alleged surveillance and state action because the existence of evidence tending to support such a theory is pure speculation. For these reasons, Plaintiff's Motion to Compel and Motion to Stay should be denied.

DEFENDANTS' MOTION TO UNSEAL AND PLAINTIFF'S REQUEST FOR FURTHER INSTRUCTIONS

With his Complaint, Plaintiff filed a Motion to Seal Court Record. On September 15, 1997, the Magistrate Judge denied Plaintiff's motion because the motion was "devoid of [the] factual support" necessary to justify sealing the record.

(September 15, 1997 Order, p.4) Subsequently, Plaintiff requested permission to submit his response to Defendants' dispositive motions only to the Court. Although the Magistrate Judge denied Plaintiff's request, the Magistrate Judge permitted Plaintiff to file his response and supporting documentation under seal because of Plaintiff's contention that release of the documents would likely result in his physical harm. (December 1, 1997 Order, p.4)

Now that the contents of Plaintiff's response are available for review, Defendants request that the Court lift the seal. "At the time the Court entered its Order, it understandably relied on [P]laintiff's assertion that he could suffer physical harm if the materials were made public. A review of the materials leaves no doubt that [P]laintiff's assertion is frivolous." (CNN's & TBS' Motion to Unseal, p.3) In response, Plaintiff stresses that statements contained in his statement of facts in opposition to Defendants' dispositive motions support the sealing of those papers as well as the sealing of documents filed by Plaintiff in the future. In fact, in his Request for Special Instructions, Plaintiff requests the Court to order that all future filings be made under seal. He contends that his physical safety is a compelling reason to deny Defendants' motion to lift the seal.

The September 15, 1997 Order advised the parties of the strong presumption in favor of the public's right to access judicial records. (September 15, 1997 Order, p.2 *citing Hagestad* V. *Tragesser,* 49 F.3d 1430, 1434 (9th Cir. 1995)) The Order also stated that in the Ninth Circuit the presumption in favor of access may be overcome only "'on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.'" (Id. *quoting Hagestad* 49 F.3d at 1434). The Order stressed that the decision to seal must be based upon a compelling reason as opposed to hypothesis and conjecture. (Id. at pp.3-4) In light of Plaintiff's responses to Defendants' dispositive motions and motion to unseal, it is now clear on the record that Plaintiff is unable to articulate factual support for his assertion that public access to the record will result in his physical harm. Instead, Plaintiff offers hypothesis and conjecture. To permit the seal to remain in the instant case would be contrary to Ninth Circuit precedent cited in the September 15, 1997 Order. Accordingly, Defendants' motion is well taken and the seal should be lifted.

In his Request for Special Instructions, Plaintiff also requests permission to amend the Complaint to state claims based on "tolling theories" against unidentified parties who are not presently named. Although leave to amend under Fed.R.Civ.P. *15(a)* should be freely given, "it may be denied if the proposed amendment either lacks merit or would not serve any purpose because to grant it would be futile in saving the plaintiff's suit." *Universal Mort. Co.* V. *Prudential Ins. Co.,* 799 F.2d *458,* 459 (9~ Cir. 1986). Because the viability of Plaintiff's claims does not rest on whether tolling applies, allowing Plaintiff to amend his complaint to state claims based on "tolling theories" against additional parties would be futile. Therefore, Plaintiff's Request for Special Instructions as it pertains to amendment should be denied.

RECOMMENDATION

For the reasons stated above, Defendants are entitled to summary judgment because Plaintiff has failed to establish a genuine issue of material fact regarding the Court's jurisdiction. Because the Court lacks jurisdiction over Plaintiff's federal claims, Plaintiff's pendant state claims are also subject to dismissal. Additionally, Plaintiff's motion to compel and motion to stay fail to satisfy Rule 56(f). Further, Defendants' motion to lift the seal is well taken. Therefore, the District Court, after its independent review, should dismiss Plaintiff's Complaint for lack of subject matter jurisdiction and thereby grant KOLD's Motion to Dismiss and Motion for Summary Judgment (#9), KGUN"S Motion to Dismiss and Motion for Summary Judgment (#22), CNN's and TBS' Motion to Dismiss *(#25)*, ABC's Motion to Dismiss (#27) and KNST's Motion to Dismiss and For Summary Judgment (#29). The District Court should also deny Plaintiff's Motion to Compel (#46), Plaintiff's Motion to Stay (#48) and Plaintiff's Request for Special Instructions (#49). The District Court should grant Defendants' Motion to Unseal. (#55)

Pursuant to 28 U.S.C. §636(B), any party may serve and file written objections within ten days after being served with a copy of this Report and Recommendation.

The Clerk is directed to mail a copy of this Report and Recommendation to the parties and/or their counsel.

Dated this 17TH day of July 1998.

"s/Nancy Fiora"
NANCY FIORA
UNITED STATES MAGISTRATE JUDGE

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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT

APPENDIX

FOR THE DISTRICT OF ARIZONA

ANTHONY S. WENC,

Plaintiff,

V.

CABLE NEWS NETWORK, INC., et al..

Defendants.

No. CIV 97-528-TUC-WDB

ORDER

Pending before the Court are the following motions filed by Defendants:[2] (1) KOLD's Motion to Dismiss and Motion for Summary Judgment,[3] (2) KGUN's Motion to Dismiss and Motion for Summary Judgment,[4] (3) Cable News Network's ("CNN")and Turner Broadcasting's ("TBS") Motion to Dismiss and Motion for a More Definite Statement, (4) American Broadcast Corporation's ("ABC") Motion to Dismiss, (5) SFX Broadcasting's ("KNST") Motion to Dismiss and Motion for Summary Judgment. Also

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[2] Defendants are Cable News Network, Turner Broadcasting Inc., American Broadcasting Co., KVOA Communications, Inc., Lee Enterprises, Inc. of which KGUN is a division, Elcom of Arizona, Inc., dba KOLD, Inc., KOLD and SFX Broadcasting, Inc,, dba KNST, Inc.

[3] On October 6, 1997, KVOA filed a joinder in this Motion for Summary Judgment.

[4] On November 7, 1997, KVOA filed a joinder in this Motion to Dismiss.

pending are: Plaintiffs Motion to Compel, Plaintiffs Motion to Stay, KOLD's Motion to Unseal and Plaintiffs Request for Special Instructions. Additionally, all Defendants have joined one another's motions and responses. On July 17, 1998, the Honorable Nancy Fiora, United States Magistrate Judge, filed her Report and Recommendation, recommending that the Court grant Defendants' motions to dismiss and for summary judgment, deny Plaintiffs motion to compel and to stay, grant
Defendants' motion to lift the seal and deny Plaintiff's request for special instructions. On July 31,1998, Plaintiff filed his Objection to the Magistrate's Report and Recommendation. On August 17, 1998, Defendants ABC, CNN, and TBS filed oppositions to Plaintiff's objections. After a thorough and *de novo* review of the record, the Court will adopt the recommendation of the Magistrate Judge. However, it is necessary to briefly address several points raised by Plaintiffs Objection.

Plaintiff's claim pursuant to 42 U.S.C. §1983

Plaintiff alleges in his Objection that there was a sufficient nexus between the broadcasters and the law enforcement officers because shortly after two law enforcement officers left his home Plaintiff was watching Crossfire on CNN and the commentator said," he is cooperating with federal agents." The Court finds that in the instant case Plaintiff has not presented any probative evidence establishing a material question of fact as to whether Defendants and the state or federal government cooperated or were inextricably involved in conducting the alleged surveillance. The alleged arrival of law enforcement officers at Plaintiff's residence and the simultaneous on-air statements that Plaintiff interpreted to be directed at him are insufficient to establish a genuine issue of material fact regarding whether Defendants are government actors under any of the four tests used to determine whether the conduct of private parties amounts to governmental action. *See. Berger V. Hanlon,* 129 F.3d *505,* 514 (9th Cir. *1997), petition for cert. filed,* 66 USLW 3783 (U.S. May 1998)(No. 97-1927). Thus, the Court will dismiss Plaintiff's claim pursuant to 42 U.S.C. §1983.

Plaintiff's claim pursuant to 42 U.S.C. §1985

As clearly explained in the Magistrate Judge's Report and Recommendation, the Ninth Circuit has stated that section 1985(1)is designed to exclusively protects federal officers. *Canlis V. San Joaquin Sheriff's Posse,* 644 F.2d 711, 716 (9th Cir. 1981). Plaintiff alleges that" his position as teacher is an office of 'trust, or place of confidence under the United States' and thus he should be protected as a federal officer. The Court will deny Plaintiff requests to expand the reach of this section. Additionally, Plaintiff has failed to present any facts to support his allegation of conspiracy or that he is a member of a protected class as required by the statute. Thus, the Court will deny Plaintiff's claims under 42 U.S.C. §1985.

Plaintiff's claims pursuant to 47 C.F.R. § 15.9 and 47 C.F.R. §2.701

Title 47 of the *Code of Federal/ Regulations* governs telecommunication matters. The FCC promulgated these regulations under the authority of the Federal Communications Act of 1934 ("FCA). The purpose of the FCA is regulation in the public interest, not the creation of private rights. *See. Scripps-Howard Radio Inc., V. Federal/ Communication Comm'n.,* 316 U.S. 4 (1942). Plaintiff cites to the provision of the FCA governing carriers' liability, 47 U.S.C. § 206, as providing a private right of action. As stated in the Magistrate Judge's Report and Recommendation 47 U.S.C. § 206 is inapplicable to the instant action because radio and television broadcasters are not common carriers under the FCA. *United States V Radio Corp.,* 358 U.S. 334, 348-49 *(1959).* In his Objection, Plaintiff alleges that CNN and TBS are cable programmers and are thus subject to the FCA's definition of common carrier. Under section 206 Congress created a private right of action when such a right was intended under the FCA. Plaintiff has failed to establish that a private right of action is available under 47 C.F.R. §§15.9 and §2.701, and thus, these claims will be dismissed.

Plaintiff's Motion to Compel and Motion to Stay

Plaintiff's discovery requests are broad and voluminous, and Plaintiff has not shown how the evidence sought will raise a genuine issue of material fact regarding the claims in this action. The Court will not allow Plaintiff such broad and burdensome discovery. Thus, the Court will deny Plaintiff's Motion to Compel and Motion to Stay.

The Magistrate Judge's Report and Recommendation is extremely thorough, addresses in detail the defects in Plaintiff's claims and provides Plaintiff with clear explanation of every ruling. Thus, the Court will adopt the Report and Recommendation with no further explanation.

Accordingly, IT IS **ORDERED** that the Report and Recommendation is adopted as the opinion of the Court.

IT IS FURTHER **ORDERED** that:

KOLD's Motion to Dismiss and Motion for Summary Judgment [Doc. #9];

KGUN's Motion to Dismiss and Motion for Summary Judgment [Doc. #22];

CNN's and TBS's Motion to Dismiss [Doc.#25];

ABC's Motion to Dismiss [Doc.#27];

KNST's Motion to Dismiss and Motion for Summary Judgment [Doc. #29]; Defendants' Motion to Unseal [Doc. ##55];

are **GRANTED.**

It is FURTHER **ORDERED** that Plaintiff's Motion to Compel [Doc. #46], Plaintiff's Motion to Stay [Doc. #48], and Plaintiff's Request for Special Instructions [Doc. 49] are **DENIED.** IT IS FURTHER **ORDERED** that this case is **DISMISSED WITH PREJUDICE** and all pending motions are denied as moot.

Dated this 24 day of September, 1998.

"s/ William D. Browning"
WILLIAM D. BROWNING
Senior United States District Judge

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SEP 25 1998
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY BW DEPUTY

APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ANTHONY S. WENC,

Plaintiff,

V.

CABLE NEWS NETWORK, INC., et al..

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. CIV-97-858-T-WDB

DECISION BY COURT. This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Defendant KOLD's Motion to Dismiss and Motion for Summary Judgment is **GRANTED**; Defendant KGUN's Motion to Dismiss and Motion for Summary Judgment is **GRANTED**; Defendant CNN's and TBS's Motion to Dismiss is **GRANTED**; Defendant ABC's Motion to Dismiss is GRANTED; Defendant KNST's Motion to Dismiss and Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED that this case is **DISMISSED WITH PREJUDICE.**

September 25 1998 — RICHARD H. WEARE
Date — CLERK

"s/ Cathy Schwader"
By) Cathy Schwader, Deputy Clerk

Copies to: WDB, OB, Wenc, Bodney, Johnsen, Wezelman, Krauja, Urman

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OCT 27 1998

URT
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY ______________ DEPUTY

IN THE UNITED STATES DISTRICT

FOR THE DISTRICT OF ARIZONA

ANTHONY S. WENC,

Plaintiff,

v.

CABLE NEWS NETWORK, INC.,et al.,

Defendants.

No. CIV 97-528-TUC-WDB

ORDER

Pending before the Court is Plaintiff's October 8, 1998 Motion to Reconsider. Rule 60(b) "provides for reconsideration only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) 'extraordinary circumstances' which would Justify relief." School Dist. No. 1J Multnomah County V. ACandS. Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (quoting Fuller V. M.G. jewelry, 950 F.2d 1437, 1441(9th Cir. 1991)). Applying these standards to the Plaintiff's motion, the Court discovers no persuasive evidence to reconsider its Order.

IT IS **ORDERED** that Plaintiff's October 8, 1998 Motion for Reconsideration is **DENIED**.

Dated this 27 day of October, 1998.

"s/ William D. Browning"
WILLIAM D. BROWNING
Senior United States District Judge

FILED
MAY 14 1999
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANTHONY S. WENC,

Plaintiff-Appellant,

v.

CABLE NEWS NETWORK, INC., c/o Turner Broadcasting Inc.; HEADLINE NEWS, CIO Turner Broadcasting Inc.; AMERICAN BROADCASTING CO., INC., ABC Inc.; KVOA COMMUNICATIONS, INC.; KGUN, INC.; KOLD, INC.; KNST, INC.; JOHN DOE,

Defendants-Appellees.

APPENDIX

No. 98-17327
D.C. No. CV-97-005280-WDB

MEMORANDUM[5]

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge, Presiding

Submitted May 10, 1999[6]

Before: REINHARDT, TROTT, and McKEOWN, Circuit Judges.

Anthony S. Wenc appeals pro se the district court's judgment against him in his complaint alleging that various members of the broadcast media have been eavesdropping on him, his family, and his acquaintances by use of satellite, laser, and microwave technology, and have improperly used and disseminated the illegally obtained information.

We affirm the district court's judgment dismissing the complaint with prejudice for the reasons stated in the magistrate judge's thorough and well-reasoned Report and Recommendation filed July 17, 1998, and in the district judge's Order filed September 25, 1998.

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[5] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[6] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Wenc's motions to supplement the Record On Appeal, to join additional defendants, and to file certain portions of the opening brief and excerpts of record under seal are denied.

AFFIRMED.

FILED
AUG - 2 1999
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY S. WENC,

Plaintiff-Appellant,

V.

CABLE NEWS NETWORK, INC., c/o Turner Broadcasting Inc.; HEADLINE NEWS, c/o Turner Broadcasting Inc.; AMERICAN BROADCASTING CO., INC., ABC Inc.; KVOA COMMUNICATIONS, INC.; KGUN, INC.; KOLD, INC.; KNST, INC.; JOHN DOE,

Defendants-Appellees.

No. 98-17327

APPENDIX

DC# CV-97-005280-WDB
Arizona (Phoenix)

ORDER

Before: REINHARDT, TROTT and MCKEOWN, Circuit Judges

The panel has voted to deny appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P.35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

LEGAL PROVISIONS

4TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

18 U.S.C.§ 2510. Definitions

As used in this chapter

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) "intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral or electronic communication other than -

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigation of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means -

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) "communication common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of title 47 of the United States Code;

(11) "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include (A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(B) any wire or oral communication;

(C) any communication made through a tone-only paging device; or

(D) any communication from a tracking device (as defined in section 3117 of this title);

(13) "user" means any person or entity who -

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) "electronic communication service" means any service which provides to users

thereof the ability to send or receive wire or electronic communications;

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not -

(A) scrambled or encrypted;

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

(17) "electronic storage" means -

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

18 U.S.C. § 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who -

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when -

(i) such device is affixed to, or otherwise transmits a signal through, a wire,cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)

(a)

(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with -

(A) a court order directing such assistance signed by the authorizing judge,

(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or Court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate.

Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person -

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted -

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which -

(I) is prohibited by section 633 of the Communications Act of 1934; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter -

(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(3)

(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication -

(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)

(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial

advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then -

(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted -

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)

(a)

(i) If the communication is -

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection -

(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.

18 U.S.C. § 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who intentionally-

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of -

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications, knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for -

(a) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication service, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

18 U.S.C. § 2520. Recovery of civil damages authorized

(a) In General. - Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) Relief. - In an action under this section, appropriate relief includes -

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) Computation of Damages. - (1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

(2) In any other action under this section, the court may assess as damages whichever is the greater of -

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

(d) Defense. - A good faith reliance on -

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other law.

(e) Limitation. - A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties-

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror - If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges-
If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for

the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

47 U.S.C. § 153. Definitions

For the purposes of this chapter, unless the context otherwise requires

(1) Affiliate

The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(5) Broadcast station

The term "broadcast station", "broadcasting station", or "radio broadcast station" means a radio station equipment to engage in broadcasting as herein defined.

(6) Broadcasting The term "broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(7) Cable service

The term "cable service" has the meaning given such term in section 522 of this title.

(8) Cable system

The term "cable system" has the meaning given such term in section 522 of this title.

(9) Chain broadcasting

The term "chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(10) Common carrier

The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(11) Connecting carrier

The term "connecting carrier" means a carrier described in clauses (2), (3), or (4) of section 152(b) of this title.

(33) Radio communication

The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(35) Radio station

The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(49) Transmission of energy by radio
The term "transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(51) Wire communication
The term "wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

47 U.S.C. § 206. Carriers' liability for damages

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

47 U.S.C. § 207. Recovery of damages

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

47 U.S.C. § 208. Complaints to Commission; investigations; duration of investigation; appeal of order concluding investigation

(a) Any person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complaint.

(b)

(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises

questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

(2) The Commission shall, with respect to any such investigation initiated prior to November 3, 1988, issue an order concluding the investigation not later than 12 months after November 3, 1988.

(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a) of this title.

Sec. 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions

As used in this section -

(1) Common carrier or carrier

The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

47 U.S.C. § 406 Compelling furnishing of facilities; mandamus; jurisdiction

The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this chapter, of any of the provisions of this chapter which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ: Provided, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper pending the determination of the question of fact: Provided further, That the remedy given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this chapter.

47 U.S.C. 558. Criminal and civil liability

Nothing in this subchapter shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use or on any other channel obtained under section 532 of this title or under similar arrangements unless the program involves obscene material.

APPENDIX

47 C.F.R. § 2.701 Prohibition against use of a radio device for eavesdropping.

(a) No person shall use, either directly or indirectly, a device required to be licensed by section 301 of the Communications Act of 1934, as amended, for the purpose of overhearing or recording the private conversations of others unless such use is authorized by all of the parties engaging in the conversation.

(b) Paragraph (a) of this section shall not apply to operations of any law enforcement officers conducted under lawful authority.

47 C.F.R. § 15.9 Prohibition against eavesdropping.

Except for the operations of law enforcement officers conducted under lawful authority, no person shall use, either directly or indirectly, a device operated pursuant to the provisions of this part for the purpose of overhearing or recording the private conversations of
others unless such use is authorized by all of the parties engaging in the conversation.

ARIZONA CONSTITUTION ARTICLE II § 8. Right to privacy

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

A.R.S. 13-1504. Criminal trespass in the first degree; classification

A. A person commits criminal trespass in the first degree by knowingly:

1. Entering or remaining unlawfully in or on a residential structure or in a fenced residential

yard; or
2. Entering any residential yard and, without lawful authority, looking into the residential
structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
3. Entering unlawfully on real property subject to a valid mineral claim or lease with the
intent to hold, work, take or explore for minerals on such claim or lease.
4. Entering or remaining unlawfully on the property of another and burning, defacing,
mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
B. Criminal trespass in the first degree is a class 6 felony if it is committed by entering or remaining unlawfully in or on a residential structure or committed pursuant to subsection A, paragraph 4. Criminal trespass in the first degree is a class 1 misdemeanor if it is committed by entering or remaining unlawfully in a fenced residential yard or committed pursuant to subsection A, paragraph 2 or 3.

13-3005 . Interception of wire, electronic and oral communications; installation of pen register or trap and trace device; classification; exceptions

A. Except as provided in this section and section 13-3012, a person is guilty of a class 5 felony who either:
1. Intentionally intercepts a wire or electronic communication to which he is not a party, or
aids, authorizes, employs, procures or permits another to so do, without the consent of either a sender or receiver thereof.
2. Intentionally intercepts a conversation or discussion at which he is not present, or aids, authorizes, employs, procures or permits another to so do, without the consent of a party to such conversation or discussion.

3. Intentionally intercepts the deliberations of a jury or aids, authorizes, employs, procuresor permits another to so do.
B. Except as provided in sections 13-3012 and 13-3017, a person who intentionally and without lawful authority installs or uses a pen register or trap and trace device on the telephone lines or communications facilities of another person which are utilized for wire or electronic communication is guilty of a class 6 felony.

13-3006 . Divulging communication service information; classification; exception

A person is guilty of a class 6 felony who either:
1. Intentionally and without lawful authority obtains any knowledge of the contents of a wire or electronic communication by connivance with a communication service provider or its officer or employee.
2. Is a communications service provider, officer or employee of a communications service
provider and intentionally divulges to anyone but the person for whom it was intended, except with the permission of the sender or the person for whom it was intended or in any case covered by the exemption in section 13-3012, the contents or the nature of a wire or electronic communication entrusted to the communications service provider for transmission or delivery.

A.R.S. 15-507 Abuse of teacher or school employee in school; classification

A person who knowingly abuses a teacher or other school employee on school grounds or while the teacher or employee is engaged in the performance of his duties is guilty of a class 3 misdemeanor.

APPENDIX

INVASION OF PRIVACY: *INTRUSION UPON SECLUSION*

Section 652B of the Restatement (Second) of Torts (p. 378, 1977), provides that: "One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." As comment b, of §652B states, "the [invasion] may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs,..."

LAWS OF UNFAIR COMPETITION *Right of Publicity*: One who appropriates the commercial value of another's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability for the relief appropriate under the rules states in §§ 48 and 49 (Restatement of Law, (Third), Unfair Competition § 46, p. 528, 1995).

OTHER PERTINENT MATERIAL

FILED JANUARY 05, 1998
CLERK OF THE U.S. DISTRICT COURT
DISTRICT OF ARIZONA

ANTHONY S. WENC
Plaintiff,
v.
CABLE NEWS NETWORK, INC., et al.

Defendants.

APPENDIX

No. CIV-97-528-TUC-NF

PLAINTIFF'S STATEMENT OF FACTS IN SUPPORT OF COMPLAINT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

The Plaintiff in this action hereby submits a Statement of Material Facts (SOF) pursuant to local rule 1.10(l) in support of his Complaint. These facts are supported by the two affidavits of Anthony S. Wenc attached hereto, including a copy of his "Loyalty Oath of Office," as well as certified copies attached to those affidavits of the following documents: Certificate of Election, Certificate of Holy Communion, and Anthony S. Wenc's college degree. (These facts are deliberately not entirely listed in chronological order.)

STATEMENT OF MATERIAL FACTS

1) From remote distances a LASER (Light Amplification by Stimulated Emission of Radiation) device is capable of reflecting a television picture of everything in a room, including the sound.[1]

2) A satellite (a manmade device that orbits in outerspace) exists which is capable of projecting lasers at great distances. Similarly, Apollo 11 experiments in 1969 measured the distance of the Earth to the moon by aiming lasers from earth to a reflector on the moon to accurately determine the distance within 14 feet[2] (the distance varies between 221,000 and 253,000 miles). A satellite is also used to transmit communications transmissions and media

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[1] Freedom and the Court: Civil Rights and Liberties in the United States. 5th Ed., Henry J. Abraham, p. 181, 1988.

[2] *Compton's Interactive Encyclopedia*, Version 1.01VW, 1992.

transmissions. In addition, a satellite exists which "possesses the capabilities to peep into our businesses, backyards, and even through physical structures into our homes[3]."

3) Media broadcasters (and other private entities) utilize the capabilities of satellites for broadcasting and "newsgathering" purposes, the latter known as mediasatellites[4].

4) Government enterprises utilize satellites for various purposes.

5) Media broadcasters, such as CNN, ABC, KVOA, KOLD, KGUN and KNST, "share" or otherwise disseminate on a regular basis data and broadcast information or programming via transmitting such data through a variety of wire/electronic communications[5].

6) Electromagnetic emissions are a form of microwaves. (Electromagnetic emissions are emitted from televisions, computer monitors and telephone lines, among other things[6].)

7) Laser beams emit, and are a form of microwaves.

8) Media broadcasters utilize equipment using microwaves in the normal course of telecommunications business.

9) The following are known "anchor" employees of Cable News Network, Inc./Headline News who were recipients or have knowledge of eavesdropping interceptions and visual surveillance of Plaintiff: Kathleen Kennedy,

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[3] *John Marshall Journal of Computer and Informational Law.* Warrantless Satellite Surveillance: Will our 4th Amendment Privacy Rights Be Lost in Space? Vol. XIII, N. 4, p. 732, 1995.

[4] *Stanford Journal of International Law.* Newsgathering by Satellites. Fall 1988.

[5] See *47 CFR 74.431* for a related description of such dissemination and the governing of such.

[6] See *Case Western Reserve Journal of International Law.* Eavesdropping on the Compromising Emanations of Electronic Equipment: The Laws of England and the United States. Vol. 23:359, 1991.

Karen Maginnis, Valerie Hoff, Myron Kandell, Beverly Schuck, Bobbie Batista, Natalie Allen, Donald Vandermark, Pat Buchanan, Mark Shields, Susan Rook, Lou Waters, Linden Soles, Michael Kinsley, Chuck Roberts, Robert Novak, Lou Dobbs, Lyn Vaughn, Patrice Thornby, Joe Oliver, Judy Woodruff, Bernard Shaw, Larry King, Greta Van Susteren, Nancy Newman, David Goodnow and Gary Labrock. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Anthony S. Wenc Affidavit # 2, ¶ 1, 27).

10) The following are known "anchor" employees of the American Broadcasting Companies, Inc. who were recipients or have knowledge of eavesdropping interceptions and visual surveillance on Plaintiff: Barbara Walters, John Belmont, Sam Donaldson, Doug Lymerick, Tim O'Donnel, Cokie Roberts, David Brinkley, Clarence Page and Hugh Downs. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Wenc Affidavit # 2, ¶ 1, 28).

11) The following are known "anchor" employees of SFX Broadcasting, Inc./KNST, who were recipients or have knowledge of eavesdropping interceptions and visual surveillance on Plaintiff: Victoria Steele, Don Wallace, Lionel Waxman, Brian Jeffries, Walter Williams, Alan Kath. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Wenc Affidavit # 2, ¶ 1, 29).

12) The following are known "anchor" employees of KVOA Communications, Inc., who were recipients or have knowledge of eavesdropping interceptions and visual surveillance on Plaintiff: Patti Weiss, Kathy Ryan, Joe Donlon, Pamela Davis, Russ Lewis, Savannah Guthrie, Salli Shamrell, Michael Goodrich, Martha Vasquez and Dan Ryan. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Wenc Affidavit # 2, ¶ 1, 30).

13) The following are known "anchor" employees of Lee Enterprises, Inc./KGUN, who were recipients or have knowledge of eavesdropping interceptions and visual surveillance on Plaintiff: Guy Atchley, Lori Raymond, Norma Cancio, Colleen Bagnall, Jim Lemon, John Paul, Kristin Lee, Alan Kath, and Sabrina Dorsey. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Wenc Affidavit # 2, ¶ 1, 31).

14) The following are known "anchor" employees of Elcom of Arizona, Inc./KOLD, who were recipients or have knowledge of eavesdropping interceptions and visual surveillance on Plaintiff: Tina Naughton, Mindy Blake, Chuck George, Bud Foster, Jim Becker, Steve Quis, Barbara Grijalva, Michael Cowman, and Barbara McDonald. In addition, there are unknown employees who are responsible for the use of technical related broadcast equipment. (Wenc Affidavit # 2, ¶ 1, 32).

15) Unknown persons, who may or may not be employees of the defendants or may be employees of a government entity, operated a highly technological eavesdropping and visual surveillance device, likely a satellite, to surveille Plaintiff Anthony Wenc. (Wenc Affidavit # 2, ¶ 1, 33).

16) Numerous non-employees of KNST who use the premises and broadcasting equipment for their commercial promotional programming shows have knowledge of the interceptions and surveillance of Plaintiff. (Wenc Affidavit # 2, ¶ 1, 34).

17) Numerous "guests" were present for interviews or other purposes on KNST's premises from April 1995 to April 1996. Many of these guests were state officials. (And continues to do so in its normal course of business). (publicly verifiable).

18) Alan Kath was an employee in some commercial capacity concurrently for both KGUN and KNST providing

"Skyview" traffic reports during 1995 to 1996 (exact dates unknown at this time). (Wenc Affidavit # 2, ¶ 1, 29, 31).

19) Dan Ryan an employee of KVOA and Steve Quis an employee of KOLD have a sports show that airs weekly on KNST. (publicly verifiable).

20) KGUN is a direct affiliate of the ABC, Inc. broadcasting network. (publicly verifiable).

21) KNST of SFX Broadcasting, Inc. is a direct affiliate of the ABC, Inc. broadcasting network for "news on the hour" and other programming provided by ABC aired "live" or tape delayed. (publicly verifiable).

22) Cable News Network, Inc. (CNN) interviewed numerous state officials on its various broadcasting premises from April 1995 to June 1996. (And continues to do so in its normal course of business). (publicly verifiable).

23) Normal broadcasting equipment--satellites (space and ground dish), receivers, transmitters, or other related equipment, is capable of receiving or transmitting electronic transmissions that can originate from a source that intercepted the information via eavesdropping or some other illegal or tortious method. (Wenc Affidavit # 2, ¶ 1, 26).

24) Broadcasters Cable News Network, Inc./Headline News of Turner Broadcasting System, Inc.; ABC, Inc.; KGUN-9 TV of Lee Enterprises, Inc.; KOLD-TV 13 of Elcom of Arizona, Inc. (and Raycom Media, Inc.); KVOA-TV 4 of KVOA Communications, Inc.; and KNST-AM 790 of SFX Broadcasting, Inc. all received oral and telephonic eavesdropping interceptions of Anthony Wenc regardless of whether an unknown "third" party initiated the eavesdropping interceptions and subsequently disseminated the interceptions. This occurred from approximately April, 1995 to June, 1996. (Wenc Affidavit # 2, ¶ 1, 4, 26-34).

25) Evidently, Jeff Sales, Debbie Wagner, Jon Ruby and Karen Lee Rice do not and can not keep track of the conduct of every employee 24 hours a day of his/her

respective broadcasting station KOLD, KNST, KVOA, and KGUN. (Wenc Affidavit # 2, ¶ 1, 26, 29-32).

26) Media broadcasters maintain implied or direct commercial agreements with government entities. For example, KOLD is under direct contract with the Arizona State Lottery to disseminate winning numbers. (publicly verifiable).

27) Defendants and their employees, and others present on broadcasting premises continuously leaked information intercepted of Plaintiff. (Wenc Affidavit # 2, ¶ 1, 9, 26-34).

28) Those persons stated herein, and unknown others, received intercepted information of Anthony Wenc during "live" broadcasts in the "talking ear" device broadcasting personnel wear during live broadcasts. This allowed these persons to make remarks regarding specific acts or things said by Plaintiff to "get Plaintiff's attention," or in some instances to beckon Plaintiff to call in to either a "live" radio or television show on KNST and CNN respectively as exampled herein. (Wenc Affidavit # 2, ¶ 1, 9, 26-34).

29) Defendants eavesdropped and monitored Anthony Wenc for "newsgathering" or other purposes due to his occupation as a teacher, membership in the Republican Party, membership as a Roman Catholic, and, in part, due to previous media attention of him in 1990. (Anthony Wenc Affidavit (# 1) ¶ 1-3, Wenc Affidavit # 2, ¶ 5, 8, 9, 11, 12)

30) Defendants "rekindled" and hence exacerbated libels, some originating in from facts 44 and 45, by placing excessive attention on Plaintiff through their surveillance activities and numerous dissemination "leaks" and gossip. (Wenc Affidavit # 2, ¶ 1, 4, 5, 8, 9, 11, 12, 22-34).

31) Plaintiff was employed by the Sierra Vista Public Schools from January 1994-May 1995. (Wenc Affidavit # 2, ¶ 1, 2).

32) Plaintiff was employed as a full-time secondary teacher from September 1994 to May 26, 1995, possessing all rights equal to other certified teachers under law. (Wenc Affidavit # 2, ¶ 1, 2; A.R.S. Title 15)

33) Prior to the "conspiracy," supervisors made statements to Plaintiff regarding future continuing employment by using such remarks as "if you [a student] get Mr. Wenc next year...." (Wenc Affidavit # 2, ¶ 1, 21).

34) Various negative false rumors were spread about Plaintiff at the school by various colleagues and students, mainly in the last couple of months, April and May 1995, creating a "controversy" over his character as exampled by fact 36. (Wenc Affidavit # 2, ¶ 1, 6-8, 21).

35) Various colleagues made remarks concerning Plaintiff's religion. For example, one said "he's Roman Catholic." Another stated "he's a good Catholic." (Wenc Affidavit # 2, ¶ 1, 21).

36) A colleague commented to Plaintiff, in late May, regarding one of the negative rumors: "I know you're not gay Tony." (Wenc Affidavit # 2, ¶ 1, 21).

37) On May 24, 1995, a student in Plaintiff's classroom remarked to at least two other students "The government is using Mr. Wenc for experiments." (Wenc Affidavit # 2, ¶ 1, 6).

38) On May 25, 1995, a student in Plaintiff's classroom made the outburst to the class "Mr. Wenc is the talk of the whole town!" (Wenc Affidavit # 2, ¶ 1, 7).

39) Somehow or another, students, colleagues, and supervisory personnel had knowledge or awareness that Plaintiff was under some sort of eavesdropping and monitoring surveillance due to facts 33- 39. (Wenc Affidavit # 2, ¶ 1, 6, 7).

40) On June 02, 1995, Plaintiff went to the University of Arizona College of Law Library and upon entering the library, people who Plaintiff did not know made a couple remarks regarding Plaintiff. Person "one," a male,

stated "that's Mr. Wenc." Person "two," a female, stated "Sad--he wants justice." A third person, a male, said "he has witnesses." (Wenc Affidavit # 2, ¶ 1, 22).

41) In June 1995, Plaintiff attended an informal dinner meeting with associates from the local Cochise County Young Republican Club. At this dinner, Plaintiff overheard other patrons remark about him, one said to her acquaintance "he was on CNN" as she directed towards Plaintiff's table. (Wenc Affidavit # 2, ¶ 1, 23).

42) In January 1996, Plaintiff attended an opera at the Tucson Music Hall. It is here Plaintiff heard other opera goers discussing Plaintiff in that they were repeating things in their conversation that Plaintiff had said in various conversations in the preceding several weeks said only in the privacy of his residence or that of his family's. (Wenc Affidavit # 2, ¶ 1, 24).

43) Sometime in either January, February, or March 1996 Plaintiff attended a lunch gathering at the local Elk's Lodge Club. It is here Plaintiff overheard other attendees remarking on Plaintiff. These persons made remarks to the following effect: "He's on unemployment." Then another person stated "they are both on unemployment." (The "they" referring to Plaintiff and his sister who also ate lunch there that day. She was also on unemployment at that time.) Another remark was "satellite" as he directed towards Plaintiff's locale. (Wenc Affidavit # 2, ¶ 1, 25).

44) Sometime between June 10 and July 15, 1990, KVOA aired an "in disguise" libelous, rumorous story regarding Anthony Wenc. (Wenc Affidavit # 2, ¶ 11).

45) Sometime between July 02 and July 13, 1990, The Oprah Winfrey entertainment and gossip show aired a libelous show regarding Anthony Wenc. As best Plaintiff has deduced, some of the guests were childhood elementary acquaintances of Plaintiff, dating to 7th grade or earlier. (Plaintiff was then 19 years old.) (Wenc Affidavit # 2, ¶ 12).

46) *The Oprah Winfrey Show* airs locally, (southern Arizona) on KOLD and did in 1990. (publicly verifiable).

47) Until Plaintiff can view in full the video of *The Oprah Winfrey Show* as stated in fact 45, he reasonably believes statements originating from this show subsequently became dissemintated that Plaintiff was a child molestor. (Wenc Affidavit # 2, ¶ 12).

48) In light of facts 44 and 45, Plaintiff believes there may be other archival information related to Plaintiff by other media broadcasting entities not named in this Civil Action. (Wenc Affidavit # 2, ¶ 13).

49) It is, in part, from facts 44, 45, and 47 that attributed the television and radio media to become "interested," in Plaintiff during 1995 and 1996. (Wenc Affidavit # 2, ¶ 5, 9b).

50) During at least one show of ABC's *This Week With David Brinkley*, between April 1995 to April 1996, "in disguise" remarks were made regarding Plaintiff by persons present in the broadcast. (Wenc Affidavit # 2, ¶ 1, 9h).

51) During a show on KNST in either April 1995 or May 1995, most likely April, persons on a locally produced and aired "live" show made remarks to beckon Plaintiff to call into this show or "get his attention.". Plaintiff was listening to this show. (Wenc Affidavit # 2, ¶ 1, 9a).

52) A State and federal law enforcement officer visited Plaintiff's residence either May 22, 1995 or May 23, 1995, approximately 4:30 p.m. MST. At this same time Plaintiff was watching the entertainment show *Crossfire,* aired "live" on CNN while calculating students' grades. After Plaintiff returned from the brief encounter and questioning by these agents, one of the hosts, Michael Kinsley, remarked: "he is cooperating with federal agents." Evidently, CNN was waiting for a "breaking news" story. (Wenc Affidavit # 2, ¶ 1, 5, 9b).

53) Either May 22, 1995 or May 23, 1995 while Plaintiff was watching the entertainment show *Newsnight* on

CNN, the host Kathleen Kennedy, at approximately 9:00-9:30 p.m. MST said in between stories : "We're going to clear you." (Clear Plaintiff of the rumors (libels and under seal) circulating presumably; this is a "live" program also). While saying this, she tilted her head towards her shoulder, to signal Plaintiff she was referring to him, as this was how his head was positioned while he was relaxing on the couch watching. It is this action that led Plaintiff to aghastly realize some sort of visual/video surveillance was taking place. (Wenc Affidavit # 2, ¶ 1, 5, 8, 9c).

54) On May 25, 1995, Plaintiff had an interview/evaluation regarding his current employment and potential continuing employment as a full-time teacher with the Sierra Vista Public Schools. (Wenc Affidavit # 2, ¶ 1, 2).

55) On May 25, 1995, within approximately one hour of his employment interview, KVOA broadcast parts of Plaintiff's employment interview "live" that were intercepted illegally, in what could be regarded as a "special report." (Wenc Affidavit # 2, ¶ 1, 2, 9d).

56) During an episode of the entertainment show "*Capital Gang,* " sometime in December 1995 or January or February of 1996 aired "live" on CNN, host Robert Novak made the "in disguise" remark "he wants a trial." Plaintiff was watching this show. (Wenc Affidavit # 2, ¶ 1, 9e, 17).

57) During a "live" radio program aired on KNST in February 1996, a host of one of the shows made the remark "pedophile seeking employment" over the air to get Plaintiff's attention as to beckon him to call in to the show. Plaintiff was listening to this program. (Wenc Affidavit # 2, ¶ 1, 8, 9f, 14, 29).

58) Between approximately April 1995 and April 1996, unknown callers would call into various radio shows of KNST regarding Plaintiff and related facts in this Civil Action. (Wenc Affidavit # 2, ¶ 1, 9a, 9f, 9g).

59) During a "live" broadcasts by KGUN between May 1995 and March 1996 anchors made subtle "in

disguise” comments in “live” broadcasts similar to those mentioned herein. (Wenc Affidavit # 2, ¶ 1, 9j).

60) Between May 1995 and April 1996 (and to date, as Plaintiff has on file applications with various school districts.) Plaintiff was actively seeking employment with potential employers. (Wenc Affidavit # 2, ¶ 1, 2, 3, 14).

61) During a weather report believed to have aired in early 1996 on KOLD, Chuck George made a “subtle” remark directed at Plaintiff saying “you have a lot to live for,” referring to Plaintiff's thoughts of depression and suicide, inflicted upon Plaintiff by the Defendants due to the eavesdropping and surveillance they were conducting. (Wenc Affidavit # 2, ¶ 1, 4, 9i).

62) In various episodes of *This Week with David Brinkley* aired on ABC, various “in disguise” remarks regarding Plaintiff. For example, Cokie Roberts made the remark “he was only a boy.” Evidently referring to libels originating from *The Oprah Winfrey Show* in July 1990. (Wenc Affidavit # 2, ¶ 1, 8, 91,11,12).

63) On numerous other occasions between April 1995 and June 1996, broadcasting personnel continued on occasion with similar subtle remarks on various entertainment shows as only exampled in facts stated herein. (Wenc Affidavit # 2, ¶ 1, 9, 10).

64) It is the unusual “subtle or in disguise remarks” as stated herein that allowed Plaintiff to discover and realize and thus witness eavesdropping and surveillance was being conducted on him. (Wenc Affidavit # 2, ¶ 1, 9, 24-26).

65) Based on facts presented herein, Plaintiff has reasonably concluded that “satellite surveillance” was being utilized on him. (Wenc Affidavit # 2, ¶ 1, 4, 6, 7, 9, 15, 22-26).

66) CNN/TBS, ABC, KOLD, KNST, KGUN, KVOA and *The Oprah Winfrey Show* all have archives containing information as listed herein. (Wenc Affidavit # 2, ¶ 1, 13).

67) *The Oprah Winfrey Show* is produced by Harpo Productions, Inc. ABC, Inc. and Harpo Productions, Inc. maintain direct commercial agreements pertaining to *The Oprah Winfrey Show.* For example, on the internet @ www.oprahshow.com is operated by ABC online. (publicly verifiable.)

68) Between July 1995 and February 1996, Plaintiff made inquiry calls to legal counsel regarding legal matters mostly related to facts in this Civil Action. (Wenc Affidavit # 2, ¶ 1, 15).

69) On January 18, 1996, Plaintiff called the law firm of Deconcini, McDonald, Brammer, Yetwin & Lacy PC and spoke with attorney David Anson regarding facts in this Civil Action. Mr. Anson was very interested in hearing the Plaintiff's case and found merit in it until a conflict of interest came up due to his firm representing KOLD and the likelihood of KOLD being a defendant. Contrary to Mr. Urman's attempt to influence the court in its "Clarification concerning motion for sanctions" in which Mr. Urman baselessly states that "neither the [FCC] nor the [FBI] found any merit in Plaintiff's allegations." To the contrary, Mr. Anson suggested to the Plaintiff "[he'd] heard of things like that using microwaves. Maybe they were in cohoots with the CIA.[7] " (Wenc Affidavit # 2, ¶ 1, 15).

70) On three occasions, between December and February 1996, Plaintiff met in person with legal counsel to initially discuss legal matters mostly related to facts in this Civil Action. (Wenc Affidavit # 2, ¶ 1, 16).

71) Plaintiff made various calls to a private investigator, who was under confidential retainer, between December 1995 and January 1996. (Wenc Affidavit # 2, ¶ 1, 9f, 17).

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[7] It is somewhat ironic that this firm served an empty threat for a motion for sanctions now that the action is commenced.

72) Plaintiff filed a Complaint via certified mail on October 11, 1996 with the FCC related to claims in this Civil Action. The FCC lost this Complaint twice, upon the third time, receiving it via fax, the FCC officials told Plaintiff on the phone (March 03, 1997) it was a criminal matter within the FBI's jurisdiction. (Wenc Affidavit # 2, ¶ 1, 18).

73) On March 25, 1997, Plaintiff filed a complaint with the local FBI office in Sierra Vista, AZ as advised and referred by FCC officials. (Wenc Affidavit # 2, ¶ 1, 18).

74) Defendants KGUN, KOLD, KNST, KVOA, CNN/TBS and ABC are inextricably linked due to the facts presented herein. (Wenc Affidavit (# 1) ¶ 1-3, Wenc Affidavit # 2, ¶ 1-34).

75) Plaintiff wanted to file a Civil Action naming *The Oprah Winfrey Show* of Harpo Productions, Inc. in either this pending Civil Action or a separate Civil Action for any redresses he might have against such a party, or other parties, for apparent defamation or other claims he may have. Plaintiff could not file such an action as the named Defendants currently in this Civil Action intimidated and hindered him from doing so due to their surveillance activities. (Wenc Affidavit # 2, ¶ 1, 17, 20).

76) Plaintiff feels and believes potential harm could result to him if libels stated herein were further publicly disseminated or "rekindled" once again in any form. In fact, sometime in the summer of 1995 Plaintiff was shot at through his front window by a person using a BB gun, had it been a regular gun, he may very well have been wounded, perhaps fatally. (Wenc Affidavit # 2, ¶ 1, 20).

77) Plaintiff felt threatened and intimidated due to the surveillance that if he had filed any suit of any kind, particularly related to the libel facts in this Civil Action, that a media "frenzy" would ensue and result in further undue publicity and thus result in possible physical harm as violent hate crimes often occur against innocent people. There are a lot of "nuts," for lack of a better term, living in this world.

(Wenc Affidavit # 2, ¶ 1, 20 and see AP report dated 11/08/1997 as just one example.)

Dated January 05, 1998 "s/Anthony S. Wenc"

Anthony S. Wenc,*Plaintiff*

Copies of the foregoing mailed, to the addresses on record, this 05th day of January 1998, to:

David J. Bodney/CNN & TBS
Diane M. Johnsen & Stephen E. Silverman/ABC
George O. Krauja & Jennifer M. Dubay/KGUN
Janice A. Wezelman/KVOA
Gary F. Urman/KOLD & KNST

FILED OCTOBER 08, 1998
CLERK OF THE U.S. DISTRICT COURT
DISTRICT OF ARIZONA

ANTHONY S. WENC
Plaintiff,
v.
CABLE NEWS NETWORK, INC., et al.

Defendants.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

No. Civ 97-528-TUC-NF

AFFIDAVIT #3 OF ANTHONY WENC

STATE OF ARIZONA)
) ss.
County of Cochise)

I, Anthony S. Wenc, do solemnly swear under oath the following four paragraphical statements:

1) I make this affidavit in accord with my two other affidavits, dated October 15, 1997 and January 03, 1998 as a supplemental statement to the Court at this time to clarify and/or expand previous statements.

2) The following is an detailed description of the visit by the law enforcement officers as previously discussed in fact 52 from Plaintiff's Statement of Material Facts: On either May 23 or 24, 1995, at approximately 4:35 to 4:45 p.m. the following encounter occurred on Plaintiff's/my private residence (private property). I was watching the show "Crossfire" on CNN when I noticed a couple men approaching close to the window of my apartment heading to the back door. Before ringing the doorbell, one of the men, Dennis Jackson, was peering through my window. Next the doorbell rang. I answered and the two men identified themselves as undercover agent Mike Roach of the Pima Country Sheriff's Department and undercover Special Agent Dennis Jackson of Federal Customs. The two then asked me if I knew who lived in Apartment #21 located on the same property. I told them I did not recall the name. I then offered to make a phone call and see if I could contact someone who might be able to supply me with the occupants name. (I assist with some of the management of the property). No one answered the phone to where I called. I then returned to the undercover agents and stepped outside and suggested I could walk over to the apartment to see if visualizing the location would jog my memory to the person's name. I began walking over towards the apartment, which is located in a building approximately 75 feet from my building and around the corner of that building approximately another 75 feet. Before I even walked down to the corner of that building, the agents asked me if the person's name was Arturo Montoya. I said something to the

effect of, "yes, that's it." The name instantly rang a bell. Then the agents suddenly seemed disinterested in going any further as they turned around and said it was not necessary to continue on. We then proceeded back towards my apartment. The agents then began to proceed towards their car and I asked them if they had a card. Agent Jackson pulled out a card and gave it to me, but Deputy Roach did not have one, but wrote his name and office telephone number on Jackson's card. I then reentered my apartment to hear the comments on CNN's Crossfire as I have stated in paragraph five of my previous affidavit (#2). The law enforcement officers then left in the unmarked car they had parked in the back.

3) To clarify for the record, I witnessed the rebroadcast of my employment interview as it aired on KVOA on May 25, 1995 as there are televisions throughout Buena High School.

4) Finally, I would just like to offer the following statement to the Court at this time in the case. I can understand that some of the facts sound unplausible, however, I can only report to the Court that which I have observed. I'm sure it goes without saying that every person knows what is going on in their personal environment and can sense suspicious and strange activity. Make no mistake about it Your Honor, I certainly did not want to believe such things could happen to me to alter my life negatively. Moreover, who wants to believe that you could be watched and otherwise observed in your own home? I know I certainly did not. All I can plead to the Court is to allow me to prove my allegations as it is obvious the Defendants are unwilling to come forward with the truth. Thus, I can only ask that the Court grant my pending motions. Thank you Your Honor.

"s/AnthonyWenc"
Anthony Wenc

SUBSCRIBED AND SWORN to before me this 07th day of October, 1998, by Anthony Wenc.

My Commission Expires:
"April 23, 2001" "s/Diana L. Nitschke
NOTARY PUBLIC
AP 8-Nov-1997 7:46 EST REF5139

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The information contained in the AP news report may not be published, broadcast, rewritten or otherwise distributed without the prior written authority of The Associated Press.

By MARY PEMBERTON

Associated Press Writer BEL AIR, Md. (AP)-- When Kymberly Griffin picked up the phone, the voice told her there had better be a "For Sale" sign on her home if she wanted her her children to return from school alive. Another day she discovered a note tacked to her front door that said: "Move or Die." Ms. Griffin, a married mother of two who lives on a cul-de-sac of tidy townhouses in Bel Air, has fallen victim to the new state law requiring child sex offenders to register with their address with the police. Ms. Griffin is not a child sex offender, but her sister-in-law is in the Hartford County Detention Center serving a sentence for statutory rape of a 13-year old boy. Ms. Griffin's life was turned upside down when her sister-in-law applied for work release. Under Maryland's version of Megan's law, which took effect Oct. 1, convicted child sex offenders must register with authorities upon release so their neighbors will be warned. The sister-in-law put down Ms. Griffin's address, where two of her three children live, though she was not scheduled to be released until January. The detention center's letters mistakenly warning residents of a child sex offender in their midst was sent to 19 groups.

Ms. Griffin's neighbor, a Girl Scout leader showed up at her door and hander her the letter. "She knew it wasn't me, but she said "We don't want anybody around here like that," Ms. Griffin said. Ms. Griffin has received over a dozen threatening phone calls and four notes. Once friendly neighbors have turned their backs. Her children are afraid to go outside.

The law does not require that addresses provided be verified said Sgt. Ed Hopkins, a spokesman for the county sheriffs office. But Stephen W. Lutche, the Griffins' Lawyer, said the detention center should have verified the address and never have sent that letter.

"I find it appalling that a convicted felon is taken at her word without any attempt to verify that is the address," he said.

Lutche said he's looking into whether the Griffins should file a lawsuit claiming defamation or federal civil rights violations.

To try to rectify the problem, another letter was sent about two weeks after saying that the sister-in-law did not live at Ms. Griffin's address. The county sheriff has asked the Maryland Attorney General's office for advice and says in the future an officer will visit the addresses to verify them.
Too little, too late, Ms. Griffin says. The night before Halloween someone shot at the children she said. When she reported the incident to the police, she said they blamed it on Halloween pranks.

"All the kids are terrified. They don't want to leave the house," Ms. Griffin said. "Everybody wants us out."

AP 22-Jan-1998 13:18 EST REF5694

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APPENDIX

The information contained in the AP news report may not be published, broadcast, rewritten or otherwise distributed without the prior written authority of The Associated Press.

By JEFFREY GOLD

Associated Press Writer
NEWARK, N.J. (AP)-- Under Megan's Law, authorities may go door to-door to tell residents about sex offenders moving into their neighborhood.

Now two newspapers have printed stories quoting information from a "sex offender release notice," angering authorities who meant it only for neighbors' eyes and alarming those who fear such notices can lead to vigilante action.

The Home News Tribune of East Brunswick ran a front-page story Wednesday, including two mug shots from the notice naming Ronald Terpak.

The flier was distributed to a small area straddling Union and Middlesex counties, with a warning that it "may not be released beyond your immediate household, given to the press, or posted anywhere."

The newspaper omitted Terpak's address, but the article and a front-page map identified the streets of his neighborhood.

The article, but not the pictures, also was published in the Asbury Park Press, a sister paper, and posted on the newspapers' Internet sites, making it accessible from anywhere in the world.

"We heard the fliers were going out, and thought we'd be remiss if we didn't do it," said Teresa Klink, managing editor of the Home News Tribune. She wouldn't say how the newspaper got the notice.

Ms. Klink said the newspaper considered the flier "public information." Asked whether she believed it raised the risk of vigilantism, the editor said, "I don't know whether it will or not. We decided to be fair and not publish the man's address."

Today, the paper reported that when public documents on criminal record were sought this week, a Home News Tribune reporter was told by authorities that because of Megan's Law, they couldn't be released.
Several officials today denied that Megan's Law closes such records. Any indictment and conviction can be obtained from the courts, said Richard P. Rodbart, deputy first assistant Union County prosecutor.

Court officials in Union County were not immediately available for comment, but Home News Tribune Editor Richard A. Hughes said the newspaper expects to get the records today.

W. Raymond Ollwerther, executive director of the Asbury Park Press, defended the decision to publish the information. He said the newspaper decides whether to publish information about sex offenders on a case-by-case basis depending on newsworthiness.

Terpak has been free since March 1993 after serving three years for attempting to endanger the welfare of a child. He does not have a phone listing and could not be reached Wednesday for comment.

Attorney General Peter Verniero said it was improper for the information to be given to the newspaper. He said prosecutors will investigate how the information got out.
"Improper dissemination may be considered contempt of court." Verniero said in a statement. "I also reiterate that any act of vigilantism against a known sex offender will not be tolerated."

Under Megan's Law, authorities may go door to-door to notify residents that sex offenders considered to pose a high risk of committing new crimes have moved nearby. The notification area must be approved by a judge and may be challenged by the offender at a closed judicial hearing.

The law was named for Megan Kanka, a 7-year-old who was raped and murdered by a sex offender who had moved into her neighborhood.

When it upheld Megan's Law in 1995, the state Supreme Court wrote "we assume that the media will not knowingly frustrate the explicit legislative goal of confining notification to those likely to encounter the offender."

The state public defender's office, which is pursuing several appeals of Megan's Law, said the newspaper's action is evidence that notification can result in an invasion of the offender's privacy.

A lawyer who represents offenders challenging the law predicted vigilante action and flight for Terpak. "When this happens, bad things happen to the registrant," said John S. Furlong, who does not represent Terpak. 'Typically, these guys are rendered jobless and homeless by executive fiat," Furlong said. "It will shift our problem to a neighboring state, another community, because we refuse to confront a tough, public mental health issue."

FILED JANUARY 05, 1998
CLERK OF THE U.S. DISTRICT COURT
DISTRICT OF ARIZONA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ANTHONY S. WENC
Plaintiff,
v.
CABLE NEWS NETWORK, INC., et al.

Defendants.

No. CIV-97-528-TUC-NF

MOTION TO COMPEL DISCOVERY PURSUANT TO CIV. R. 37(a)(2) AND LOCAL RULE 1.10(k)

The Plaintiff in this action hereby requests that the Court order the Defendants to comply with the Plaintiff's already served "Discovery Request" and "Interrogatories" and future discovery requests pursuant to Civ. R. 37. Pursuant to Local Rule 1.10(k) these discovery requests and the submitted objections are described below followed by a Memorandum of Law to support this motion. In addition, copies of correspondence between the parties are attached regarding these discovery requests. In addition, the Court may find that it is necessary on its own motion to issue an order pursuant to Civ. R. 16.

1) The Plaintiff has submitted the following "Discovery Request" to KOLD, KNST, KVOA and KGUN on November 24, 1997:

The Plaintiff in this action hereby requests the following Discovery information pursuant to Civ.R. 26 (b)1 (as applicable to the circled Defendant):

1) Identity and address of all employees for KOLD-TV 13; KGUN-9; KVOA-TV 4; KNST-AM 790 Radio. from April 01, 1995 to April 30, 1996. Also include a title of each person's occupation and a brief description of his/her duties. If an employee is no longer employed with the station, please provide current forwarding address or last known permanent address with date of departure.

2) With regards to KNST, please include the following information as well: Names and addresses of all persons who have business agreements for purposes of

exercising advertisement/promotional programming shows via utilizing the station's premises and broadcast equipment for purposes of the show, and the time in which these programs aired. Also, include all identity and location of persons who were considered "guests" for appearing on any radio show from April 01, 1995 to April 30, 1996.

The Plaintiff has also served all the Defendants with the following Interrogatories on December 06, 1997:

INTERROGATORIES

1) State the name of the person completing these interrogatories, his/her title of employment for the defendant, and duration of employment with the defendant.(Add, as applicable other persons as directed in instruction G).

2) Describe, in specific detail, the method by which the earpiece device ("talking ear") that media broadcasting personnel wear during "live" broadcasts to receive transmissions. Include the source(s) by which information can/is transmitted from, who the information reaches before it is relayed directly to the media anchor/person wearing the "talking ear."

3) a) Describe, in sequential order, the routing electronic transmissions, video, audio or other, are received into broadcast equipment owned by the broadcaster.

b) State the location(s) this equipment is located.

c) State all sources transmitted voice, video or other electronic tranmissions can be derived which ultimately make their way to the local broadcaster.

4) Describe the sequence of events that take place in disseminating "live" broadcasts, news or otherwise, from the source to the broadcasting

studio. (i.e. persons and technological devices involved).

5) a)State the type of space communications/broadcasting satellite you utilize regularly for receiving and transmitting broadcast trasmissions (voice, video, data, or other electronic transmission). Include the manufacturer and model name.

b) State approximately the altitudinal range, in miles, that space communications/broadcasting satellites reside in space.

c) State who (name and address) owns and operates the equipment listed in 5(a) of this interrogatory.

6) State the name of all government agencies, state, federal, county or local, in which you maintain commercial agreements with in the course of your business. Briefly state the nature of the business conducted with such an entity.

7) State the name of all parties: private corporations, public corporations, and other business entities in which you maintain commercial agreements with in the course of your business. (You may exclude those businesses that have advertisement agreements, unless such an agreement allows/requires the use of the broadcasting premises and equipment in any way.) Briefly state the nature of the business conducted with such an entity.

8) In general, is it possible that informational transmissions, voice, video, data, or other electronic transmissions, transmitted and received via normal broadcasting transmitters and receivers, could have originated from a source who obtained the

information of the transmission via eavesdropping or some other illegal or tortious method?

The Plaintiff has also sent a letter to all Defendants requesting a "meet and confer" agreement or a meeting to discuss such an agreement per Civ. R. 26(d) on December 27, 1997 attached hereto. However, Defendants appear to be fixated on their premise that no discovery should not occur until after the Court has ruled on the dispositive motions. Their premise is irregular and not founded on law.

In addition, CNN/TBS was served with a discovery request on December 18, 1997, which is attached. (Not being attached to the Defendants' copies of this motions as they already have a copy.) In light of the facts, it is obvious why that request should be complied with.

2) KGUN, on December 24, 1997 has objected to the November 24, 1997, "Discovery Request" for the following reasons, which Defendants KOLD, KNST and KVOA have identically Joined this objection:

This is the response of Lee Enterprises, Inc. of which KGUN-9 is a division, to Plaintiff's "Discovery Request" dated November 24, 1997. For purposes of this reponse we have stated request no. 1, which is the only request addressed to KGUN-9.

KGUN-9 objects based on Fed. R. Civ. P., Rule 26(d). No meeting under Fed. R. Civ. P. Rule 26(f) has occurred, nor has any order or agreement authorized Plaintiff's premature discovery request.

KGUN-9 also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to admissable evidence. The request for the identity and address of all employees over a thirteen-month period, without any identification of the purpose of the request appears calculated to provide Plaintiff information to harass KGUN's employees. In addition, discovery is premature, and should be stayed until the court rules on pending dispositive motions.

KGUN has also filed a formal objection with the Court to Plaintiff's December 06, 1997 Interrogatories, which KOLD, KNST, and KVOA have identically Joined. Its objection as served upon the Plaintiff dated December 24, 1997 is as follows:

KGUN-9 objects to all Interrogatories numbered 1-8, as premature and not permitted under Fed. R. Civ. P., Rule 26(d). No meeting of the parties has occured under Fed. R. Civ. P., Rule 26(f), nor has any order or agreement authorized the discovery request.

KGUN-9 also objects to all Interrogatories as overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. The Interrogatories seek highly technical information regarding broadcasting, and electronic transmissions, the response to which would require expenditure of considerable time and resource by KGUN. In addition, the Interrogatories seek voluminous information concerning commercial agreements by KGUN that appear unrelated to the allegations of the Complaint. KGUN has filed a potentially dispositive Motion to Dismiss, and all discovery should be stayed pending the court's ruling on KGUN's Motion to Dismiss.

In addition, CNN/TBS has notified the Plaintiff of its intention to file a formal objection to Plaintiff's December 06, 1997, Interrogatories. Thus far, it has replied with two letters submitted to the Plaintiff regarding attempts between the Plaintiff and CNN/TBS to reach an agreement with CNN/TBS to answer the interrogatories. (See attached four letters: CNN-December 17, 1997, Wenc fax letter-December 19, 1997, CNN letter-December 22, 1997, Wenc fax letter #2-December 24, 1997.)

Defendant ABC has responded in no form whatsoever regarding the December 06, 1997, Interrogatories submitted by the Plaintiff and has therefore waived its right to object as the 15 days to reply, as stated in Appendix A-Interrogatories of the Rules of Practice of the District of Arizona, has expired.

3) The responses and objections of KGUN, KVOA, KNST, and KOLD to the November 24, 1997 "Discovery Request" are deficient for the following reasons.

First, there is nothing premature about making a discovery request. It is just that, a request, and if an opposing party chooses to object, then it may do so and subsequently alternative means for compliance with discovery will take place, as in this motion. Second, there is nothing overbroad in requesting names of employees of the Defendants who not only have knowledge of the actions of the Complaint, but are also witnesses, perhaps even hostile witnesses. The Plaintiff has not sought such information "to harass [Defendants'] employees" as KGUN attempts to insinuate. That information was requested for precisely what is stated in Civ. R. 26(b)1.

Likewise, the responses and objections to Plaintiff's "Interrogatories" are dificient as well. The general theme among CNN/TBS, KGUN, KOLD, KNST and KVOA is that they believe they need not answer the interrogatories until after the Court has ruled on the pending potentially dispositive motions, or that all the interrogatories are burdensome. There was nothing burdensome for the Defendants to surveille the Plaintiff for virtually a year or more. In addition, KGUN, KVOA, KNST and KOLD have objected to each individual interrogatory for the identical reason which is baseless as each differ substantively in what each propound. Moreover, a Plaintiff is entitled to discovery when Motions for Summary Judgment are filed, thus there was nothing premature about the Plaintiff submitting the interrogatories.

MEMORANDUM OF LAW

APPENDIX

In support of this Motion to Compel Discovery, Plaintiff refers the Court to the entire "Memorandum in Support of Plaintiff's Complaint...," particulary the conclusion section, as well as both of the Affidavits of Anthony Wenc. Not only has the Plaintiff provided *prima facie* evidence of fact in that Memorandum, but the Plaintiff is entitled to discovery as a matter of law when a defending party has submitted a Motion for Summary Judgment. Specifically, Civ. R. 56(c) states "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file...." Obviously, Plaintiff can not place into admissions interrogatoires or any other item relating to discovery if the Defendants do not provide proper replies to discovery requests. In addition, the Supreme Court has stated: [i]t is probably true that in the ordinary conspiracy case a plaintiff would be entitled to obtain discovery against all the alleged conspirators instead of being obligated to proceed against them seriatim. *First National Bank Of Arizona v. Cities Service Co.* 391 U.S. 253, 88 S. Ct. 1575, 20 L. Ed. 2d (1968).

Therefore, the Court, as a matter of law must compel the Defendants to comply with submitted discovery requests by the Plaintiff.

Dated__January 05, 1998 "s/Anthony S. Wenc"
Anthony S. Wenc,*Plaintiff*

Copies of the foregoing mailed, to the addresses on record, this 05th day of January 1998, to:

David J. Bodney/CNN & TBS
Diane M. Johnsen & Stephen E. Silverman/ABC
George O. Krauja & Jennifer M. Dubay/KGUN
Janice A. Wezelman/KVOA

Gary F. Urman/KOLD & KNST

DeCONCINI McDONALD
YETWIN & LACY, P.C.
2525 E. BROADWAY BLVD., #200
TUCSON, ARIZONA 85716-5300
(520) 322-5000
Gary F. Urman
State Bar No. 011748
Attorneys for Elcom of Arizona, Inc. dba KOLD

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Anthony S. Wenc,)
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)
Plaintiff,)
v.)
)
Cable News Network, Inc./Headline)
News c/o Turner Broadcasting Inc.,)
American Broadcasting Company,)
Inc. (ABC Inc.), KVOA Communications,)
Inc., KGUN Inc., KOLD Inc., KNST)
Inc., "John Doe Defendants,")
)
Defendants.)

No. CIV-97-528-TUC-NF

APPENDIX

AFFIDAVIT OF JEFF SALES

STATE OF ARIZONA)
ss.
County of Pima)

Jeff sales, being first duly sworn, upon his oath deposes and says:

1. I am the vice president of Elcom of Arizona, Inc., dba KOLD-TV 13 ("KOLD") and am general manager of KOLD. I am aware of the activities of KOLD employees.

2. To the best of my knowledge, KOLD and its employees have not conducted any visual surveillance eavesdropping or any type of eavesdropping of Plaintiff Anthony Wenc, at any time.

3. To the best of my knowledge, KOLD and its employees have not conducted any type of surveillance or eavesdropping involving Anthony Wenc utilizing aural satellite and/or microwave technology and/or a laser device or other prohibited radio eavesdropping devices.

4. KOLD does not own or possess any satellite surveillance equipment, microwave surveillance equipment or laser surveillance devices.

5. To the best of my knowledge, KOLD has not received transmissions, images, data, recordings or any other information from any other media source involving visual or aural surveillance of or eavesdropping on Anthony Wenc.

6. To the best of my knowledge, KOLD archives do not contain any data or information or images or recordings of Anthony Wenc that were or could have been acquired through any sort of visual or aural surveillance or eavesdropping.

Subscribed and sworn to before me this 17th day of September, 1997, by Jeff Sales.

My Commission Expires: "s/Thelma Gonzales"
12/9/99 Notary Public

AFFIDAVIT OF JON RUBY

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

1. I am the President of KVOA Communications, Inc. ("KVOA") and am the General Manager of KVOA. I have served as General Manager since 1974.

2. I have personal knowledge of the nature and capacity of the electronic transmitters and other equipment owned, managed and operated by KVOA. I am aware of the activities of KVOA employees.

3. To the best of my knowledge, KVOA and its employees have not conducted any visual surveillance eavesdropping or any type of eavesdropping of Plaintiff, Anthony Wenc., at any time.

4. To the best of my knowledge, KVOA and its employees have not conducted any type of surveillance or eavesdropping involving Anthony Wenc utilizing aural satellite and/or microwave technology and/or a laser device or other prohibited radio eavesdropping devices.

5. KVOA does not own or possess any satellite surveillance equipment, microwave surveillance equipment or laser surveillance devices.

6. To the best of my knowledge, KVOA has not received transmissions, images, data, recordings or any other information from any other media source involving visual or aural surveillance of or eavesdropping on Anthony Wenc.

7. To the best of my knowledge, KVOA archives do not contain any data or information or images or recordings of Anthony Wenc that were or could have been acquired through any sort of visual or aural surveillance or eavesdropping.

SUBSCRIBED AND SWORN to before me this 30th day of September, 1997, by Jon Ruby.

My commission Expires:
"March 6, 2000"

"s/Carole Kitsteiner"
Notary Public

AFFIDAVIT OF KAREN LEE RICE

STATE OF ARIZONA)
)
County of Pima)

KAREN LEE RICE, being first duly sworn, upon her oath deposes and says:

1. I am the General Manager of KGUN-9, which is a division of Lee Enterprises, Inc. hereafter referred to as "KGUN". I am generally aware of activities of KGUN employees.

2. I make this affidavit based on my own personal knowledge and my review of KGUN'S records and archives, which are kept in the ordinary course of KGUN's business.

3. KGUN is a broadcasting station that entertainment, educational, sports and news programs. not affiliated or associated with any federal or state political subdivision.

4. To the best of my knowledge, KGUN and its employees not conducted any visual surveillance eavesdropping or any of eavesdropping of Plaintiff Anthony Wenc at any time.

5. To the best of my knowledge, KGUN and its employees have not conducted any type of surveillance or eavesdropping involving Anthony Wenc utilizing aural satellite and/or microwave technology and/or a laser device or other prohibited radio eavesdropping devices.

6. KGUN does not manufacture, distribute, possess, or advertise any satellite surveillance equipment, microwave surveillance equipment or laser surveillance devices.

7. To the best of my knowledge, KGUN has not received transmissions, images, data, recordings or any other information from any other media source involving visual or aural surveillance of or eavesdropping on Anthony Wenc, and KGUN has not entered into any agreement with any media source to receive or disseminate such items.

8. To the best of my knowledge, KGUN archives do not contain any data or information or images or recordings of Anthony Wenc that were or could have been acquired through any sort of visual or aural surveillance or eavesdropping.

9. To the best of my knowledge, KGUN and its employees are unaware of any teacher contract, which might have been offered to Anthony Wenc, Mr. Wenc's profession, or his attempts to find employment.

10. To the best of my knowledge, KGUN and its employees have not intentionally entered into any real property owned by Anthony Wenc either with or without is consent.

“s/Karen Lee Rice
Karen Lee Rice

SUBSCRIBED AND SWORN to before me this 22nd day of October, 1997, by Karen Lee Rice.

My Commision Expires: "s/Beverly A. Shillinger
"June 25, 1999" Notary Public

DeCONCINI McDONALD
YETWIN & LACY, P.C.
2525 E. BROADWAY BLVD., #200 TUCSON, ARIZONA 85716-5300
Gary F. Urman, State Bar No. 011748
Attorneys for SFX Broadcasting of Tucson, Inc. (KNST Inc.)

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Anthony S. Wene,)
)
)
Plaintiff,)
v.)
)
Cable News Network, Inc./Headline)
News c/o Turner Broadcasting Inc.,)
American Broadcasting Company,)
Inc. (ABC Inc.), KVOA Communications,)
Inc., KGUN Inc., KOLD Inc., KNST)
Inc., "John Doe Defendants,")
)
Defendants.)

No. CIV-97-528-TUC-NF

AFFIDAVIT OF DEBBIE WAGNER

APPENDIX

Debbie Wagner, being first duly sworn, upon her oath deposes and says:

1. I am the Vice President and General Manager of KNST-FM and SFX Broadcasting of Tucson, Inc. (collectively, "KNST"). I am responsible generally for all of the business activities and operations of KNST. I have held this position for approximately three years, and this position makes me aware of the work-related activities of KNST's employees.
2. To the best of my knowledge, information, and belief, KNST and its employees never have conducted visual surveillance eavesdropping or any other type of eavesdropping with respect to Anthony S. Wenc, at any time.
3. To the best of my knowledge, information, and belief, KNST and its employees never have conducted any type of surveillance or eavesdropping involving Anthony S. Wenc utilizing aural satellite and/or microwave technology and/or a laser device or other prohibited radio eavesdropping devices, at any time.
4. KNST does not own or possess any satellite surveillance equipment, microwave surveillance equipment, or laser surveillance devices.
5. To the best of my knowledge, information, and belief, KNST has not received transmissions, images, data, recordings, or any other information from any other source involving visual surveillance, aural surveillance, any surveillance assisted by microwave technology, or any surveillance assisted by any other form of device involving eavesdropping of Anthony S. Wenc or surveillance of Anthony S. Wenc.
6. To the best of my knowledge, information, and belief, KNST's archives do not contain any data, information, or images or recordings of Anthony Wenc that were or could

have been acquired through any sort of visual or aural surveillance or eavesdropping.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing statements are true and correct based on my personal knowledge, information, and belief.

Subscribed to and sworn to before me this 27th day of October, 1997, by

"s/Debbie Wagner
Debbie Wagner

My Commission Expires:
"My Commission Expires March 1, 1999"

"s/James E. Hernandez"
Notary Public

AFFIDAVIT OF JON RUBY

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

1. I am the President of KVOA Communications, Inc. ("KVOA") and am the General Manager of KVOA. I have served as General Manager since 1974.
2. In response to paragraph 9(d) of Affidavit #2 of Anthony Wenc dated January 3, 1998, I pulled and reviewed the scripts for the four news shows run at KVOA on May 25, 1995.
3. There is no mention of Mr. Wenc, or any broadcast of the interview referenced in his Affidavit in the Day Break, 5:00 p.m. or 10:00 p.m. shows; there is no script for the 6:00 p.m.

show since it was a live show which dealt exclusively with the CAP Town Hall.

Further affiant sayeth not.

"s/Jon Ruby"
JON RUBY

SUBSCRIBED AND SWORN to before me this 16 day of January, 1998, by Jon Ruby.

My commission Expires:
"March 6, 2000"

"s/Carole Kitsteiner"
Notary Public

LOYALTY OATH OFFICE

STATE OF ARIZONA)
)
COUNTY OF COCHISE)

I Anthony S. Wenc, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will hear true faith and allegiance to the same, and defend them against all enemies, foreign and or domestic, that I will faithfully an impartially discharge the duties of the office of Substitute Teacher (NAME OF OFFICE)
at SIERRA VISTA PUBLIC SCHOOLS (SCHOOL DISTRICT NAME AND NUMBER)

according to the best of my ability, So Help Me God (or so I do affirm).

"s/Anthony S. Wenc"
(SIGNATURE OF OFFICER OR EMPLOYEE)

ACKNOWLEDGMENT BY NOTARY PUBLIC:
Subscribed and sworn to before me this 7th day of January A.D. 1994.

My Commission expires: "My Commission Expires December 15, 1995."

ACKNOWLEDGEMENT BY OTHER OFFICIAL:
Subscribed and sworn to before me this ___day of ________ A.D. 19___.

____
(NAME & TITLE OF ACKNOWLEDGING OFFICIAL)

NOTE: Acknowledgement of this Oath may be made by any of the following officials, in addition to a notary public: a judge of a court of record, a clerk or deputy clerk of a court having a seal, a commissioner or recorder of deeds, a justice of the peace, a mister in chancery, a county recorder, a county superintendent of schools or the state superintendent of public instruction. No school superintendent. Principal. personnel officer, or other school official is permitted to acknowledge this Loyalty Oath. A Loyalty Oath must be subscribed to by each teacher or administrator at the time of his signing a contract of employment unless he has submitted one acknowledged by the State Department of Public Instruction's Certification Division (ARS 15-231). Each 'classified employee, under in employment contract must also sign a new Loyalty Oath the time of signing a new contract; but every other employee is required to subscribe to this Oath only once that is on or before he commences his employment.

FOR S.D.P.E. USE ONLY:

FILED IN THE OFFICE OF THE ARIZONA STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AS SHOWN ON DATE STAMP HEREON.